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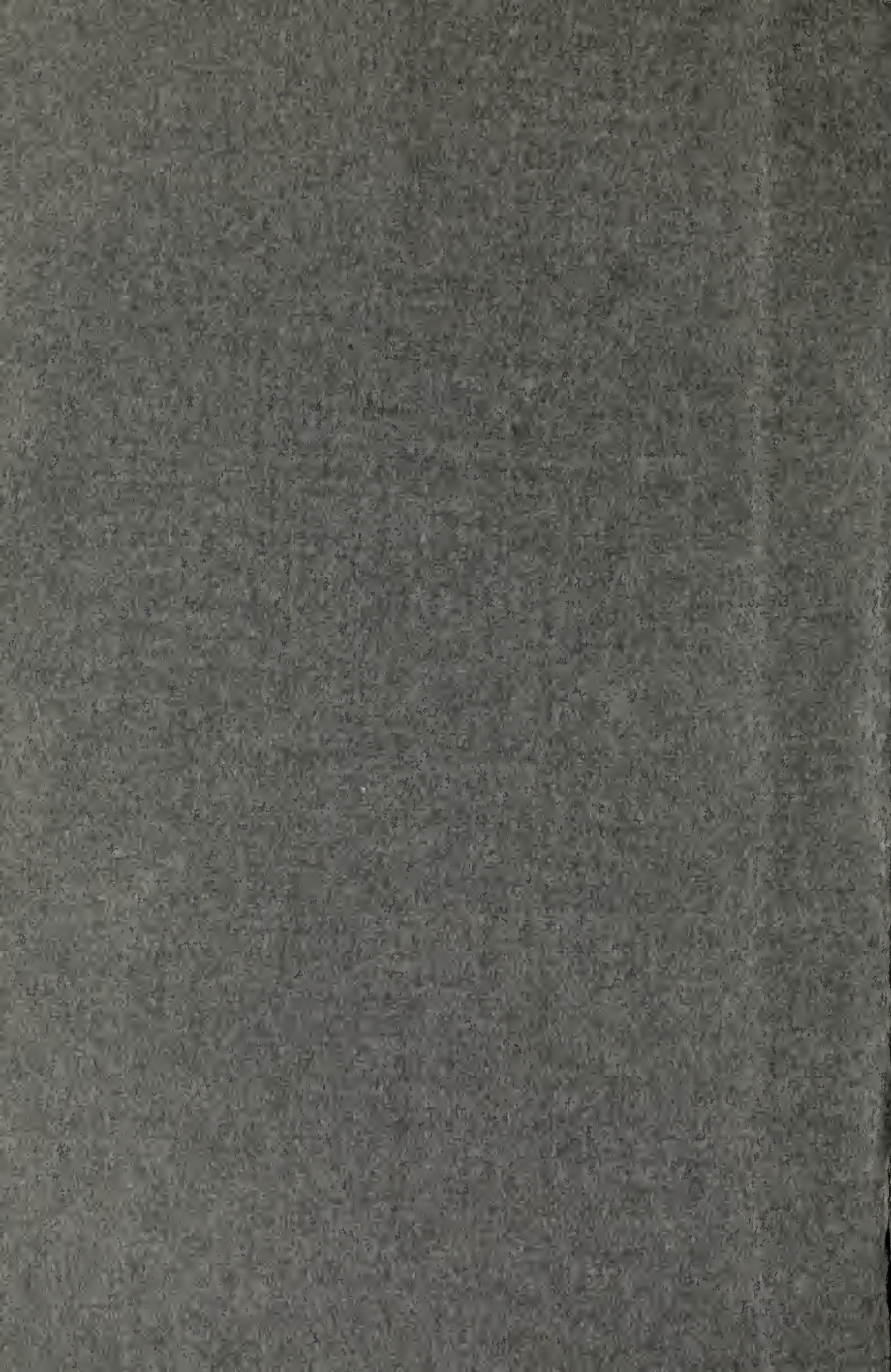


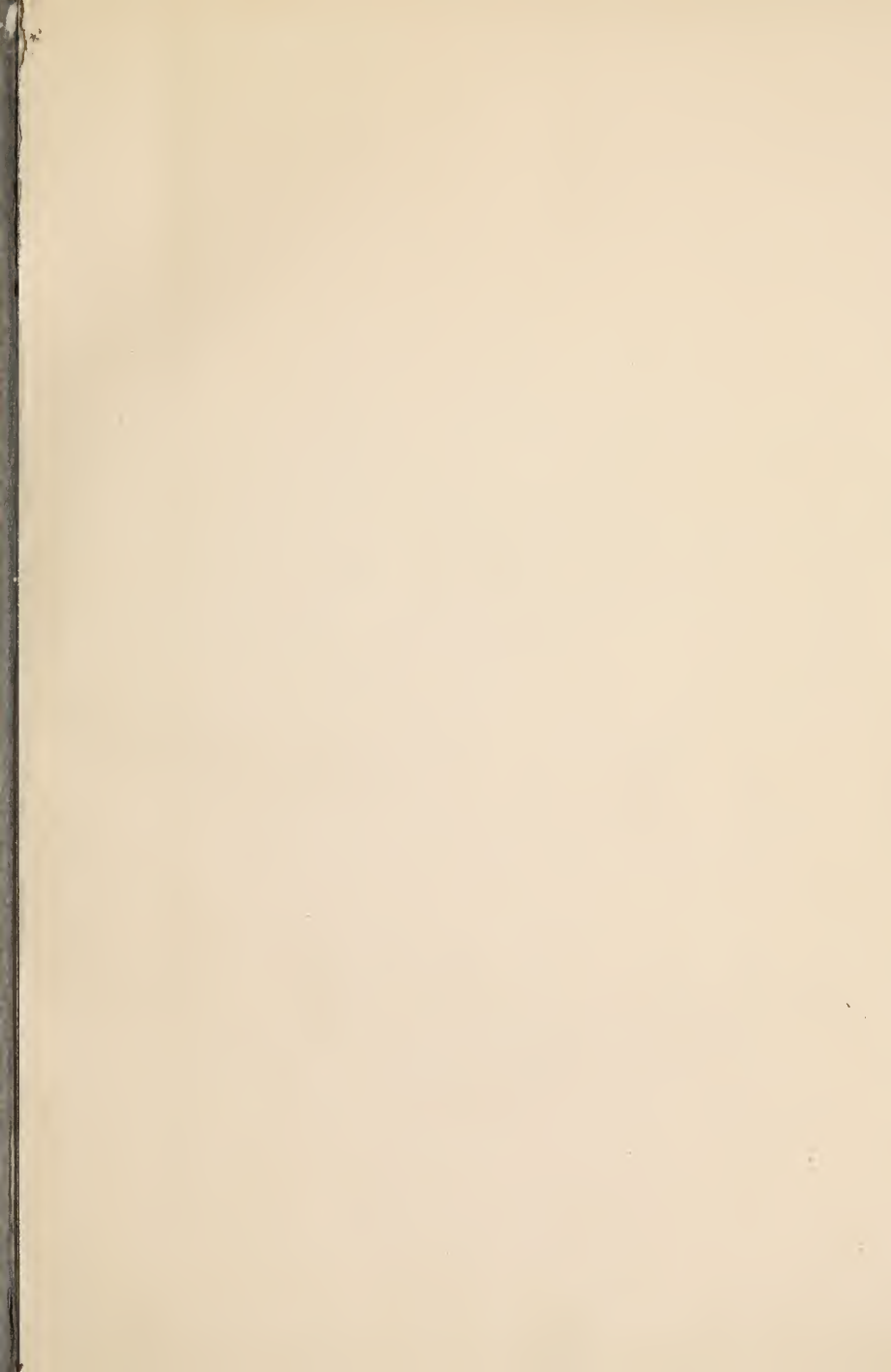
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THE
LIBERTY
OF THE
PRESS

SCHUYLER







THE LIBERTY OF THE
PRESS IN THE AMERI-
CAN COLONIES Before
the Revolutionary War.
With Particular Reference to Con-
ditions in the Royal Colony of New
York.

BY

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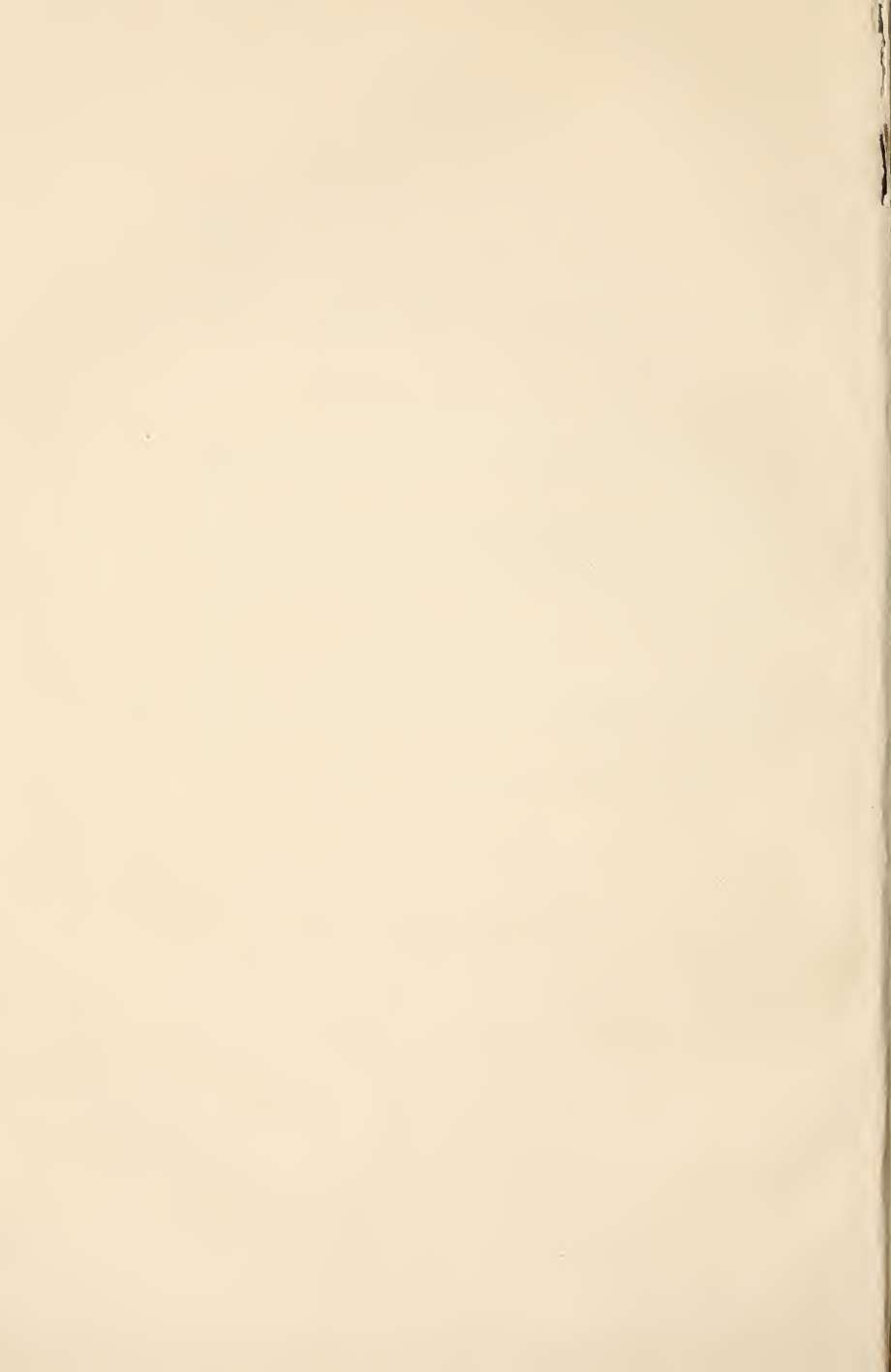
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THE LIBERTY OF THE PRESS

IN THE AMERICAN COLONIES BEFORE THE REVOLUTIONARY WAR, WITH PARTICULAR REFERENCE TO CONDITIONS IN THE ROYAL COLONY OF NEW YORK.

CHAPTER I

THE PRESS IN ENGLAND BEFORE THE NINETEENTH CENTURY

IMMEDIATELY on the introduction of printing the Church assumed towards it an attitude at once intimate and watchful. Since all that affected the welfare of the mind and the health of the soul was of importance to the Church, it was not at all surprising that the demand was at once made that nothing should be put forth by the press save that which had received the sanction—the “Imprimatur”—of the Diocesan authority, or later of the official delegated by the personal representative of the Papacy. The rules that were laid down for the direction of the printer were full and explicit, and no resistance seems to have been attempted. At the period of the Reformation in England, the power of supervision over all forms of printing passed from the hands of the Church to the civil authority. This followed naturally from the theory that the King, as Head of the Church, inherited all rights of oversight in matters of opinion and morals formerly pertaining to the Pope, and exercised in England by the Bishops in his name. The Henrician and Elizabethan Bishops still gave the “Imprimatur,” but it was now as representing the King. The fact of publication without authority was in itself a crime deserving of severe punishment.¹

A further step in the restriction of printing was the establishment (in line with the general tendencies of the time), of monopolies by patent. In 1557 the Stationers' Company was formed of ninety-seven London stationers, and to it was committed the sole right to print books licensed by the proper authority.² As representing the Sovereign, the Star Chamber exercised a supervision over the manner in which the law was carried out; in 1559 it ordered that all books were to read by a Bishop or a mem-

¹ May, *Constitutional History II*, p. 103.

² Collier, *Essay on the Law of Patents, and General History of Monopolies*.

ber of the Privy Council before going to the press, and in 1586 gave permission for a printing press to be set up in each University, the licenser in this case being the Vice Chancellor. In the same year the Star Chamber ordered that all books were to be read and licensed by the Archbishop of Canterbury or the Bishop of London, with the exception of law books where were to be read by the Chief Justice of either Bench or the Lord Chief Baron.

Proclamations issued by Queen Elizabeth from time to time,³ indicate the difficulty found in enforcing this monopoly and requirement of licensing, and a proclamation issued by Elizabeth⁴ against "bringing into the realm unlawful books" indicates that the statute of Henry VIII⁵ repealing the permission given in the reign of Richard III to import books from abroad⁶ was being systematically disregarded. Attorney-general Popham gives witness to the same effect when in his speech before the Star Chamber in the prosecution of Sir R. Knightley and others he says, "Her Majesty Queen Elizabeth, in her great wisdom, hath issued proclamations that no pamphlets or treatises should be put in print but such as should first be seen and allowed; and further, lest that were not sufficient, she ordained that no printing should be used anywhere but in London, Oxford, or Cambridge. Notwithstanding all this served not, but they would print in corners and spread abroad things unprinted: wherefore Her Majesty set forth a proclamation *in anno* 25 that all Brownist books, and such other seditious books should be suppressed and burnt."⁷

The Star Chamber continued to exercise control over printing during the reign of James I, but with increasing difficulty, not lessened by the arbitrary and cruel ways in which it acted towards those whom it believed to be breaking its rules and regulations. The flood of books printed abroad continued into the reign of Charles I, and in 1637 we find a Star Chamber decree, "for reducing the number of master-printers, and punishing all others that should follow the trade, and for prohibiting as well the impression of all new books without license, and of such as have been licensed formerly without a new one, as the importation of all books in the English tongue, printed abroad, and of all foreign books whatever,

³ 12 Eliz. 15 Eliz. 18 Eliz. 21 Eliz. 25 Eliz. 26 Eliz. 31 Eliz and 43 Eliz.

⁴ 11 Eliz.

⁵ 25 H. VIII, c. 15, Sect. 1.

⁶ 1 R. III, c. 9, Sect. 12.

⁷ State Trials, Vol. I, p. 1263.

till a true catalogue has been presented to the Archbishop of Canterbury, and the Bishop of London, and the books themselves had been received by their chaplains, or other learned men of their appointment, together with the masters and wardens of the Stationers' Company." A printer disobeying this order was to be fined, disabled from printing thereafter and the printing press forfeited.

The quarrel between Charles I and the Long Parliament resulted in the abolition of the Star Chamber, but the only result, as far as the press was concerned, was a change in masters, the Crown giving place to Parliament. From time to time orders were issued by the Parliament⁸ similar in tone to those of the Star Chamber. One dated June 14, 1643, directs that "no book, pamphlet, paper, nor part of any such book, pamphlet, or paper, shall from henceforth be printed, bound, stitched, or put out to sale, by any person or persons whatsoever unless the same be first approved and licensed under the hands of such persons as both, or either, of the Houses, shall appoint for licensing of the same, and be entered in the Register Book of the Company of Stationers, according to ancient custom, and the printer thereof shall put his name thereto." It was in reply to this action by Parliament that Milton produced in 1644 his "Areopagitica," that matchless plea for freedom of speech and the liberty of the press. "We should be wary therefore," he writes, "what persecution we raise against the living labours of public men, how we spill that seasoned life of man, preserved and stored up in books; since we see a kind of homicide may be thus committed, sometimes a martyrdom; and if it extend to the whole impression, a kind of massacre, whereof the execution ends not in the slaying of an elemental life, but strikes at the ethereal and fifth essence, the breath of reason itself; slays an immortality rather than a life."⁹

But these stirring words fell on ears dulled by the clamor of contending battalions. It is true that from time to time a report of proceedings in Parliament appeared under the title of "Diurnal Occurrences in Parliament," but in general Parliament was ever ready to crush at its first appearance any spirit considered by the members to be dangerous to constituted authority. On Sept. 30, 1647, Parliament, at the instigation of Fairfax, passed an ordinance, "for the better regulation of printing," by which the restrictions were increased and a licenser appointed to whom before printing, all manuscripts had to be presented for approbation.

⁸ Mar. 9, 1642; June 14, 1643; Sept. 21, 1647.

⁹ *Areopagitica*, II, 55.

With the Restoration of Charles II the control of the press was continued by means of the Licensing Act of 1662, passed several times for periods of two years, finally expiring in 1679.¹⁰ This was essentially a republication of the Star Chamber order of 1637, but since the Star Chamber no longer existed the scene was changed from that Court to the Old Bailey. In 1679, at the trial of Henry Carr,¹¹ indicted for some passages in a weekly paper, the Lord Chief Justice Scroggs declared it criminal at common law to "write on the subject of government, whether in terms of praise or censure, it is not material; for no man has a right to say anything of government." In 1685, on the accession of James II, the Licensing Act was passed for a period of seven years, and in 1692, (during the reign of William and Mary), it was renewed for one year and the session of the following Parliament. In 1695 the House of Commons refused to again pass it, and in this way the Act expired, never to be renewed, and the press was placed on a footing of equality before the law with all other trades and occupations. And yet, as has been well pointed out by Macaulay,¹² the reasons given by the Parliament for their action did not in any way touch on the question of the rightfulness of a free press, but rather dealt with certain complaints in regard to the provisions of the law and the mode of application. "This paper," he writes, "completely vindicates the resolution to which the Commons had come. But it proves at the same time that they knew not what they were doing, what a power they were calling into existence. They pointed out concisely, clearly, forcibly, and sometimes with a grave irony which is not unbecoming, the absurdities and iniquities of the statute which was about to expire. But all their objections will be found to relate to matters of detail. On the great question of principle, on the question whether the liberty of unlicensed printing be, on the whole, a blessing or a curse to society, not a word is said. The Licensing Act is condemned, not as a thing essentially evil, but on account of the petty grievances, the exactions, the jobs, the commercial restrictions, the domiciliary visits, which were incidental to it. It is pronounced mischievous because it enables the Company of Stationers to extort money from publishers, because it empowers agents of the government to search houses under the authority of general warrants, because it confines the foreign book trade to the port of London, because it detains packages of books at the Custom House till the pages are mildewed. The Commons complain that the

¹⁰ 13 and 14 Car. II, c. 33; 16 Car. II, c. 8; 16 and 17 Car. II, c. 7; 17 Car. II, c. 4.

¹¹ Carr's Case, State Trials VII, 929.

¹² Macaulay, Hist. Eng. Chap. xxi.

amount of the fee which the licensers may demand is not fixed. They complain that it is made penal in an officer of the Customs to open a box of books from abroad, except in the presence of one of the censors of the press. How, it is very sensibly asked, is the officer to know that there are books in the box until he has opened it?" Such were the arguments which did what Milton's "Areopagitica" had failed to do. But what we mean to-day by the term, the liberty of the press, is much more than the mere right to print without a previous application to a censor. The position which the press holds in this generation is the result of a slow but steady growth. After the refusal by Parliament to renew the Licensing Act the courts still did their best to prevent the reaping of any benefit from this. Newspaper reporting, and especially the reporting of Parliamentary debates was frowned on by Bench and Parliament alike. In 1722 the House of Commons passed the resolution "That no printer or publisher of any printed newspaper do presume to insert in any such papers any debates or other proceedings of this house or any committee thereof" and when Edward Cave in 1731 began to publish in his "Gentleman's Magazine" a report of the debates he had to resort to the fiction of a "Senate of Great Lilliput" and even then lived in continual fear of prosecution.

As time passed Parliamentary reporting came to be tacitly recognized, but the law of libel still retained all its terrors. Bentham told the truth when he said "Anything which any man for any reason, chooses to be offended with is libel." Lord Mansfield in the case of Henry Sampson Woodfall, prosecuted for publishing a seditious libel, enunciated the theory that the work of the jury began and ended with deciding the fact as to whether the accused was or was not responsible for the publication of the matter complained of, the crown, through the court, to decide whether the matter was libellous. For twenty years the question was fought over, and at last in 1791, Fox having changed his views in the matter, introduced his famous bill to amend the law of libel, and in 1792 the bill became law. The importance of this act can hardly be overestimated. After stating that "doubts have risen whether on the trial of an indictment or information for the making and publishing any libel, where an issue or issues are joined between the king and the defendant, on the plea of not guilty pleaded it be competent to the jury empanelled to try the same to give their verdict upon the whole matter in issue." It goes on to enact that "the jury may give a general verdict of guilty or not guilty upon the whole matter in issue, and shall

not be required or directed by the court or judge to find the defendant guilty merely in the proof of the publication by such defendant of the paper charged to be a libel, and of the sense ascribed to it in the indictment or information." In the same spirit Judge Fitzgerald told a jury¹³ "You are the sole judges of the guilt or innocence of the defendant. The judges are here to give any help they can; but the jury are the judges of law and fact, and on them rests the whole responsibility."

Thus the idea of legal restrictions on the press passes away, and the law of libel becomes a law of the press in any case where defamation or false report is charged, and to a jury is committed the task of deciding whether the statement made was justified and proper. As Prof. Dicey aptly puts it,¹⁴ "freedom of discussion is, then, in England, little else than the right to write or say anything which a jury, consisting of twelve shopkeepers, think it expedient should be said or written. . . . Whether in any particular case a given individual is to be convicted of libel depends wholly on their judgment, and they have to determine the questions of truth, fairness, intention, and the like, which affect the legal character of a published statement."

But this point of view, which is the position in England, and to a large extent in our own land, has not been reached without a struggle, and it is to that struggle, so far as it was carried on in the American Colonies, that we must now turn our attention.

¹³ *Rex v. Sullivan*, II Cox. C. C. 52.

¹⁴ A. V. Dicey, *The Law of the Constitution*, p. 242.

CHAPTER II

THE PRESS IN MASSACHUSETTS

IT was in this colony of Massachusetts that the art of printing was first exercised on American soil by an English-speaking people,¹ the Reverend Joseph Glover, a clergyman of Sutton in the county of Surrey, England,² having, about the year 1638, collected the money necessary for the purchasing of type and press.³ In 1639 the first book, "The Freeman's Oath" appeared, and towards the work the attitude of the colonial government appears to have been favorable since we learn from the MS. records of the colony that "Att a general Court held at Boston, on the eighth day of the eighth moneth (October) 1641, Steeven Daye being the first that set upon printing, is graunted three hundred acres of land, where it may be convenient without prejudice to any town."

A second printer of the period was Samuel Green who, some seventeen years later petitioned the General Court for a grant of land, in regard to which we read, "At the second sessions of the General Court held at Boston the 19th of October, 1658, in answer to the Petition of Samuel Green; of Cambridge, printer. The Courte judgeth it meete for his Encouragement to graunt him three hundred acres of Land where it is to be found." Apparently it was deemed neither necessary nor expedient at this time to lay any restrictions upon the printer and his press, but a change of sentiment appears in 1662, when,⁴ after the publication of some books treating religious matters in a way thought to be dangerous, the General Court appointed Capt. Daniel Gookins, one of the Assistants, and the Rev. Jonathan Mitchell, the minister of Cambridge, as licensers of the press, all printing except as allowed by them being prohibited. A reaction is evidenced a few months later when on May 27, 1663, the General Court "Ordered that the printing press be at liberty as formerly,

¹ John Winthrop, *Hist. of New England*, Vol. I, p. 348.

² Lechford's MS. Note-book, p. 119.

³ Major Edward Johnson, *Wonder-Working Providence of Sion's Saviour in New England*, London Edition, p. 129.

⁴ Thomas Hutchinson, *Hist. of Mass.* I, p. 236.

till this Court shall take further order, and the late order is hereby repealed." ⁵

This liberty of action was however only temporary and we next find "at a General Court called by order of the Governor, Deputy Governor, and other Magistrates, held at Boston, 19th of October, 1664. For the preventing of irregularities and abuse to the authority of this country, by the Printing Press, it is ordered by this Court and the authority thereof, that there shall no Printing Presse be allowed in any Towne within this jurisdiction, but in Cambridge, nor shall any person or persons presume to print any Copie but by the allowance first had and obtained under the hands of such as this Court shall from tyme to tyme Impower,—The President of the Colledge, Mr. John Shearman, Mr. Jonathan Mitchell and Mr. Thomas Shephard, or any two of them to survey such Copie or Coppies and to prohibit or allow the same according to this order,—and in case of non-observance of this order, to forfeit the Presse to the Country and be disabled from Vsing any such profession within this jurisdiction for the time to come. Provided this order shall not extend to the obstruction of any Coppies which this Court shall Judge meete to order to be published in Print."

Not long after (1667) the General Court interfered in a case where the licensers had given permission to print—"This Court being informed that there is now in the presse reprinting, a book that Imitates of Christ, or to that purpose, written by Thomas Kempis, a popish minister, where in is contayned some things that are lesse safe to be infused amongst the people of this place. Doe comend to the licensers of the Presse the more full revisale thereof, and that in the mean time there be no further progresse in that work."⁶ On this Thomas Hutchinson remarks,⁷ "In a constitution less popular this would have been thought too great an abridgement of the subject's liberty." In 1674 it was ordered "Whereas there is now granted that there may be a Printing Presse elsewhere than at Cambridge, for the better regulation of the Presse it is ordered and enacted that the Revd. Mr. Thomas Thatcher and Revd. Increase Mather of Boston, be added unto the former Licensers, and they are hereby empowered to act accordingly." At the death of John Foster, the setting up of whose press in Boston had been the occasion of the order just quoted, it was thought desirable that printing

⁵ MS. Records of the Colony, quoted by Thomas Hutchinson, I, 958.

⁶ MS. Records of the Colony.

⁷ Hist. of Mass. I, p. 236.

should be continued in Boston, and Samuel Sewall, although not a printer by profession, was prevailed upon to take up the work. It may be interesting to read the license which he thus received,⁸ "Samuel Sewall, at the Instance of some Friends with respect to the accommodation of the Publick, being prevailed with to undertake the Management of the Printing Presse in Boston, late under the command of Mr. John Foster, deceased, liberty is accordingly granted to him for the same by this court, and none may presume to set up any other Presse without the like liberty first granted." Speaking of Gov. Andros and his rule in Massachusetts, Thomas Hutchinson⁹ remarks, "One of the first acts of power, after the change of government, was the restraint of the Press.¹⁰ Randolph was the licenser. There was not so much room to complain of this proceeding as if the press had been at liberty before. It only changed its keeper, having been long under restraint during the former administration."

There is in the Colonial State Paper Office in London a copy, the only one now existing of the first issue of the first newspaper to appear in the English colonies. It was published by Benjamin Harris at the London Coffee, Boston, and printed by Richard Pierce, bearing the date of Sept. 25, 1690. Without a name unless the words "Publick Occurrences" on the first page was its name, with printing on but three sides of a folded sheet and confining itself to a short summary of Indian and foreign affairs, the paper might seem to be harmless, but it attracted official attention at once. It had mentioned the conduct of the war with the Indians and had made some slight remarks on local affairs. For this reason the first issue was also its last. Buckingham¹¹ says of it, "Immediately upon its publication it was noticed by the legislative authorities. Four days afterwards, they spoke of it as a pamphlet,—stated that it came out contrary to law, and contained 'reflections of a very high nature.' They strictly forbade 'anything in print without license first obtained from those appointed by the government.'" Perhaps it was to give him something in return for the suppression of his paper that in 1692 Harris was appointed "Printer to His Excellency the Governor and Council," a position which he held for two years after which time he returned to England and published a paper there. But although his attempt in America was a failure yet it was at least the beginning, and

⁸ Records of the Colony for 1681.

⁹ History of Massachusetts, I, 318.

¹⁰ Edward.

¹¹ Reminiscences, I, p. 1.

the treatment he received was the same meted out to each of his successors who dared to be original.

During the last quarter of the seventeenth century the influence over the publications of the press exercised by the clergy naturally continued to be very great. And in cases where doctrinal matters were in dispute it appears to have been very difficult to find a publisher. In a pamphlet with the title "Gospel Order Revived, Being an Answer to a Book lately set forth by the Reverend Mr. Increase Mather, President of Harvard College, etc. entitled, The Order of the Gospel etc. Dedicated to the Churches of Christ in New England," and bearing the imprint "Printed in the Year 1700," but without either name of publisher or place of issue, we find the statement made, "The Reader is desired to take notice that the Press in Boston is so much under the aw of the Reverend Author whom we answer, and his Friends, that we could not obtain of the Printer there to print the following sheets, which is the only true reason why we have sent the Copy so far for its impression." After the appearance of this pamphlet a rather fierce war of statements and counterstatements ensued, in the course of which Bartholomew Green, the Boston publisher who had been asked to publish the "Answer" and had declined, in the course of a paper issued in justification of his refusal said "The Sum is, Whenas no Name appeared on the Title Page; nor so much as the name of any Author was told me, when I requested it,—I had no opportunity to read it over myself,—the Piece being also Controversial; I concluded that it would be altogether inconvenient for me to print it upon my own head without asking advice, for which I referr'd myself to the Honourable William Stoughton, Esq; our Lieutenant Governour—Nor was it a new thing to Show Copies to the Lieutenant Governour in order to their being printed. Mr. Seward's 'Phænomena Apocalyptica' was taken off the Press and carried to the Lieutenant Governor for his Allowance. By the same Token, one Half Sheet being wrought off too soon; the Author was at the Charge to Print it over again, to gratify His Honour in some Alterations that could not otherwise be made.' Besides other instances that might be given."¹² Here, Green in his desire to show his position, ends the explanations (some lines after the portion quoted), with the statement that he is a poor man and cannot afford to antagonize the powers that be,—making it very clear that the liberty of printing, as we understand the term to-day, was a thing undreamed of in his time and place.

¹² Thomas, Vol. I, App. I.

From 1700 to 1720 it would seem from the absence of cases of any importance that the press in Massachusetts, if not free, was not led by party spirit to enter on courses which would cause the government to interfere. But in 1721 in the record of the Council it is stated that Benjamin Gray was brought before that body charged with the offense of having published a pamphlet entitled "A Letter to a Clergyman in the Massachusetts Bay" and said to contain "expressions which greatly reflect on His Majesty's Government and people of this Province, and tend to disturb the Public Peace." For this Gray was ordered to be prosecuted by the Attorney-General. The result of the matter is not known. Again, in 1722 James Franklin the brother of Benjamin Franklin, and publisher of the *New England Courant*,—the third Boston newspaper,—began a series of articles in which the government, and even the clergy and many prevailing views of the day were warmly attacked. "Whatever we may think of Franklin's course he certainly initiated a new era in journalism. While he suffered in purse and person, the press gained in freedom and independence. The *News Letter* and the *Gazette* in Boston, and the *Mercury* in Philadelphia, the other papers then published, being in the hands of office holders, were circumspect in the utterance of their views. But Franklin was made of different stuff. His paper was the first rebel organ in America. With the leaven of '76 in his soul, he was bold and outspoken, and commented on the abuses of the times as he saw them."¹³

In reply Dr. Increase Mather issued an open letter to the public, published in the *Boston Gazette* of Jan. 29th, 1722, in which, among other things, he says, "I can well remember when the Civil Government would have taken an effective Course to suppress such a Cursed Libel which if it be not done I am afraid some Awful Judgement will come upon this Land, and that the wrath of God will arise and there will be no remedy."

About the same time Franklin had ventured in the *Courant* of June 11, 1722, to criticise the government of Massachusetts for its tardiness in dealing with piracy off its coasts and had compared its actions unfavorably with those of Rhode Island. The criticism would not seem to us to be of a very decided character, it being in the form of a supposed letter from Rhode Island, concluding with, "We are advised from Boston that the Government of the Massachusetts are fitting out a ship to go after the pirates, to be commanded by Captain Peter Papillon, and 'tis thought

¹³ Hudson, *History of Journalism*, p. 66.

he will sail sometime this month, wind and weather permitting." This veiled criticism the Council took umbrage at, and at the meeting of the Council the next day, we find the following action.¹⁴ "Ordered, That the publisher of said paper be forthwith sent for to answer for the same, and accordingly James Franklyn, of Boston, printer, was sent for, examined, and owned that he had published the said paper." The Council then resolved that the paragraph from the letter quoted above "Was a high affront to this government" and Franklin was arrested and put in prison. The records of the next meeting of the Council again refer to the matter:¹⁵ "In Council, 20 June 1722. A petition of James Franklyn, printer, humbly showing that he is truly sensible and heartily sorry for the offense he has given to this Court in the late Courant, relating to the fitting out of a ship by the government, and truly acknowledges his inadvertency and folly therein, in affronting the government, as also his indiscretion and indecency when before this Court, for all of which he intreats the Court's forgiveness, and praying a discharge from the stone prison where he is confined by order of the Court, and that he may have the liberty of the yard, he being much indisposed and suffering in his health by the said confinement; a certificate of Dr. Zabdiel Boylston being offered with the said petition." "In the House of Representatives read, and Voted, that James Franklin, now a prisoner in the stone gaol, may have the liberty of the prison house and yard, upon his giving security for his faithful abiding there.

"In Council, read and concurred; consented to. SAM'L SHUTE."

Ultimately the Council, on July 5th, 1722 passed the following resolution: "Whereas in the Paper called the New England Courant, printed weekly by James Franklin, many passages have been published boldly reflecting on His Majesty's Government and on the Administration of it in this Province, the Ministry, Churches and Colleges; and it very often contains paragraphs that tend to fill the Readers' minds with vanity to the dishonor of God and disservice of Good Men. Resolved, that no such Weekly Paper be hereafter printed without the same be first perused and allowed by the Secretary as has been usual. And that the said Franklin give Security before the Justices of the Superior Court in the Sum of £100 to be of the good Behaviour to the end of next fall Sessions of this Court." Sent down for concurrence." "Read and Non-concurred."

¹⁴ MS. Records of General Court.

¹⁵ MS. Records of General Court.

Although this attempt at the imposition of a fine did not succeed, yet Franklin was released only after an imprisonment of four weeks.

It does not appear that these proceedings had any effect in checking the freedom with which Franklin and his friends chose to comment on public men and measures. The paper of July 30th, just after the imprisonment of James Franklin, is occupied almost entirely with a chapter of Magna Charta, and the comment of a correspondent, intended to show the illegality of the proceedings of the government. Almost every paper, for several weeks, contained remarks that irritated,—and probably were intended to irritate,—those in authority, by raising a laugh at their expense.

At the beginning of January, 1723, Governor Shute sailed for England and after announcing this fact on Jan. 14, 1723, the Courant added a letter in which the writer said that “it would seem that any Governor, departing from a government with so much privacy and displeasure, cannot reasonably be supposed to promote the interests of that government when he arrives at the British Court.” For that reason the writer proposes that “two persons, born among us, of tried abilities and address, be, as soon as possible, sent to the Court of Great Britain there to vindicate the proceedings of the Honorable House of Representatives, from time to time, since the misunderstandings that have arisen between the Honorable House and Governor Shute.” The communication ends with—“Quere. Whether, (pursuant to the charter,) the ministers of this province ought now to pray for Samuel Shute, Esq. as our immediate governor, and at the same time, pray for the Lieutenant-Governor as commander-in-chief? Or, whether their praying for his success in his voyage, if he designs to hurt the province, (as some suppose,) be not in effect to pray for our destruction?”

On the same day there is the following record of proceedings in the General Court:—“In Council, Jan. 14, 1722-3—Whereas the paper, called the New England Courant, of this day's date, contains many passages, in which the Holy Scriptures are perverted, and the Civil Government, Ministers, and People of this Province highly reflected on, Ordered, that Wm. Tailer, Saml. Sewall, and Penn Townsend, Esqrs. with such as the Honorable House of Representatives shall join, be a committee to consider and report what is proper for this Court to do thereon.”

The House concurred and a report was made by the committee as follows; "The Committee appointed to consider of the paper called 'The New England Courant,' published Monday the fourteenth current, are humbly of opinion that the tendency of the said paper is to mock religion, and to bring it into contempt, that the Holy Scriptures are therein profanely abused, that the revered and faithful ministers of the Gospel are injuriously reflected on, His Majesty's Government affronted, and the peace and good order of His Majesty's subjects of this Province disturbed, by the said 'Courant'; and for precaution of the like offense for the future, the Committee humbly propose, That James Franklin, the printer and publisher thereof, be strictly forbidden by this Court to print or publish the New England Courant, or any other pamphlet or paper of the like nature, Except it be first supervised by the Secretary of this Province; and the Justices of His Majesty's Sessions of the Peace for this County of Suffolk, at their next adjournment, be directed to take sufficient bonds of the same Franklin, for Twelve Months' time."

To evade this order the name of Benjamin Franklin, (then an apprentice in his brother's office) was substituted for that of James, and under his nominal ownership the Courant continued to appear until its demise in 1727.

In the years between the prosecution of the Courant and the middle of the eighteenth century, we find little in Massachusetts for our subject. There was a prosecution in 1724 of John Chickley, Bookseller of Boston, undertaken to punish him for importing and selling a work in which Church organization and doctrine in Massachusetts were attacked, an action resulting in a fine of £50; and also an indictment of Thomas Fleet in 1741 for publishing news from England reflecting on the administration of Sir Robert Walpole. The following is the Record of the proceedings in the case of the latter. "At a Council, held at the Council Chamber in Boston, upon Tuesday, the 9th day of March, 1741.

"Whereas, there is published in the weekly paper called the Boston Evening Post of yesterday's date, a paragraph in the following words; 'Last Sunday Capt. Gibbs arrived here from Madeira, who informs us, that before he left that Island, Capt. Dandridge, in one of His Majesty's ships of forty guns, came in there from England, and gave an account, that the Parliament had called for all Papers relating to the War, and 'twas expected the Right Hon. Sir Robert Walpole would be

taken into custody in a very few days. Capt. Dandridge was going upon the Virginia station to relieve the valiant and vigilant Knight there, almost worn out in the service of his country, and for which he has a chance to be rewarded with a flag.'

"Which paragraph contains a scandalous and libelous Reflection upon His Majesty's Administration, and may tend very much to inflame the minds of His Majesty's subjects here and disaffect them to his Government.

"Therefore, Ordered, That the Attorney-General do, as soon as may be, file an Information against Thomas Fleet, the Publisher of the said Paper, in His Majesty's Superior Court of Judicature, Court of Assize, and General Gaol Delivery, in order to his being prosecuted for his said offense, as law and justice requires. W. SHIRLEY.

"Copy Examined, per J. Willard, Sec."

No further steps were ever taken in this matter, for the truth of the statement was too plain to admit of any discussion, but in spite of that the animus that directed the Council was plainly visible; and the inhabitants saw in this but another attempt to control the liberty of the press.

Hardly had this matter been settled than Fleet plunged into a theological quarrel. He published a sermon by John Wesley on "Free Grace," an action on his part which resulted in his receiving several sharp attacks from the pulpit, the Rev. John Morehead being especially severe. In the "Post" of Mar. 30, 1741, Fleet makes a reply. After stating that he had published the sermon, not because he liked it but because he thought there was a demand for it, he goes on to say, "Of all the books of controversy that I have ever read, (and I have read some) I never met with one that blamed the printers. The great Dr. Edwards, who, for his knack of finding fault, might have claimed the office of Accuser-General of all Europe, and made as free with authors as any man ever did, never that I find, meddled with the printers; and it is but of late, that some weak men have thought it the safest and easiest way to answer books, and prejudice people against authors and printers, to whisper against them in chimney corners, or declaim in public and more exalted places, where none may with safety oppose them, or speak in their own defense." In Dec., 1742, writing in the same strain, the occasion being another religious dispute, he said 'We are credibly informed that an

eminent minister of this town has lately warned his people against reading of pamphlets and newspapers, wherein are contained religious controversies. This seems a bold stroke, and a considerable step, (if the advice should be regarded,) towards that state of ignorance, in which, it seems, some folk would willingly see the body of this people enveloped. The next stroke may probably be at the LIBERTY OF THE PRESS."

The next case that we shall take up, namely that of the Fowle Brothers, occurred in 1754. Daniel and Zechariah Fowle, although closely associated, had separate printing establishments, and the younger brother, Zechariah Fowle, was prevailed upon to print a pamphlet entitled "The Monster of Monsters," satirizing the actions of the General Court of the time and particularly an Act in regard to excise. The pamphlet having appeared without an imprint suspicion fell on Daniel Fowle, and the House of Representatives considering itself aggrieved passed the following resolution, dated Oct. 24, 1755; "Resolved, that the pamphlet entitled 'The Monster of Monsters' is a false, scandalous Libel, reflecting upon the proceedings of the House in general, and on many worthy members in particular, in breach of the privilege thereof.

"Ordered, That the said pamphlet be burnt by the hands of the common hangman, below the Court-House, in King-Street, Boston, and that the Messenger see the same carried in to execution. Resolved, That the Messenger of the House do forthwith take into custody Daniel Fowle, of Boston, Printer, who, they are informed, was concerned in printing and publishing the said pamphlet, and that the Speaker issue his warrant for that purpose."

He was accordingly arrested and taken before the House. The particulars of the case which followed are taken from a pamphlet, "The Total Eclipse of Liberty," written and published by D. Fowle himself. The Speaker asked him whether he knew anything of the printing of the book. Having examined it, he said that he could not have printed it for he had no such type.

Speaker: "Do you know anything relating to the said Book?"

Fowle asked to have the House decide whether he must answer the question. Some members answering "Yes" he said he had bought some copies and had sold them at his shop.

Speaker: "Who did you buy them of?"

Fowle: "They were, I believe, sent by a young man, but I cannot tell his name."

Speaker: "Who did he live with?"

Fowle: "With Royal Tyler."

Speaker: "Did you have any conversation with him [Tyler] about them?"

Fowle: "I believe I might, in the same manner I had with many others; not that I thought him the author. It was never offered to me to print."

Speaker: "Did any of your hands assist in doing it?"

Fowle: "I believe my negro might, as he sometimes worked for my brother."

Speaker: "Has your brother any help?"

Fowle: "No."

Speaker: "Did you see any of it whilst printing?"

Fowle: "Yes."

Speaker: "Whose house was it in?"

Fowle: "I think it was my brother's."

Speaker: "Where does he live?"

Fowle: "Down by Cross Street."

Speaker: "What is his name?"

Fowle: "Zechariah."

After this Fowle was by order of the House imprisoned in the jail where he was confined for two days and then told to leave. He afterwards endeavored to obtain redress but without success. His brother, Zechariah, was not arrested, being at that time ill; and Tyler, on being brought to the House and questioned, refused to answer, and having been committed for contempt was soon released.

As the period approached when the Revolutionary War was to break out, those who were contending for the principles of liberty began to per-

ceive what a very important weapon the press might become. Accordingly it is not unusual to find town-meetings taking the matter up. At Worcester the instructions for the representative to the General Court, Joshua Bigelow, reported to the town meeting by Ephraim Doolittle, Nathan Baldwin, and Jonathan Stone, May 18th, 1767, are typical of the class:—

“To Mr. Joshua Bigelow;

“SIR;

“As we have devolved upon you the important trust of representing us at the Great and General Court, the year ensuing, we, your constituents, therefore, think it our duty and interest to give you the following instructions relative to some of your conduct in said trust.

“1. That you use your influence to maintain and continue that harmony and good will between Great Britain and this Province which may be most conducive to the prosperity of each, by a steady and firm attachment to English liberty and the charter rights of this Province, and that you willingly suffer no invasions, either through pretext of precedency, or any other way whatsoever; and if you find any encroachments upon our charter rights, that you use your utmost ability to obtain constitutional redress. . . . Take special care of the liberty of the press.”¹⁶

One of the names most widely known in connection with the struggle for the Liberty of the Press is that of Isaiah Thomas. Born in 1749, and trained from childhood to the work of a printer, his early years were spent in wandering from Charleston, South Carolina to Halifax, Nova Scotia. It may be interesting, as showing the reputation which the printers of the New England Colonies had for independence, to give an account of an incident which occurred during Thomas' stay in Halifax. Anthony Henry, the printer in Halifax for whom in 1766 the youth was working, was but an indifferent craftsman and left much to Thomas. The latter had brought with him from Boston notions of liberty, and finding that the Gazette of Halifax was printed on stamped paper, he inserted a paragraph stating that “the people of the province were disgusted with the Stamp Act.” The master was called to account by the government for having printed sedition, but laid the blame on his journeyman who was summoned to appear before the Secretary of the Province, when the following conversation ensued:

¹⁶ Wm. Lincoln. History of Worcester, Mass. p. 68.

Q. "Are you the young New England man who prints for Henry?"

A. "Yes, sir."

Q. "How dare you publish in the Gazette that the people of Nova Scotia were displeas'd with the Stamp Act?"

A. "I thought it was true."

Secretary; "You had no right to think so. If you publish any more of such stuff you shall be punished. You may go, but remember you are not in New England."

Thomas; "I will, sir."¹⁷

Thomas afterwards published in Boston a paper called the Massachusetts Spy and in 1771 he became seriously involved with the government concerning an article (in the issue of Nov. 14,) signed Mucius Scævola, in which it was declared that Hutchinson was not the legal governor of the Province. Extracts from the Boston Evening Post and the Boston Gazette of Nov. 18, give an account of what occurred.

"We hear that at a council held at the Council Chamber last Saturday, a piece signed Mucius Scævola, published in the Massachusetts Spy of Nov. 14th, printed by Isaiah Thomas, was taken into consideration, when it was unanimously ordered, that the Attorney General be directed to prosecute the publisher thereof. It is said the piece referred to (from its nature and tendency) is the most daring production ever published in America."¹⁸

"On Friday last, in the afternoon, his Excellency the Governor laid before the Council for their advice thereon, a paper in the Massachusetts Spy of Thursday, signed Mucius Scævola, said to contain divers seditious expressions, &c. The council after debating till sundown adjourned till the next day, when they met again and sent for the printer, who in answer to the summons, told the messenger he was busy in his office, and should not attend; Upon which it is said a motion was made for his commitment to prison for contempt—but did not obtain. Whether the abundant lenity of the honourable, or from their having no legal authority in the case, has not yet transpired to us. The final result was,

¹⁷ B. F. Thomas, Memoirs of J. Thomas, p. 19.

¹⁸ Boston Evening Post.

their unanimous advice to the Governour to order the King's Attorney to prosecute the Printer at Common-Law."¹⁹

Joseph Greenleaf, a justice of the peace for the county of Plymouth, being suspected of having some concern, either as a writer, or otherwise, in the Massachusetts Spy, received a summons of the purport following, which he laid before the public in the Spy of November 22, 1771.

"Province of Massachusetts Bay—To Joseph Greenleaf, Esq., of Boston, in said province,—

"You are required to appear before the Governor and Council, at the Council-chamber in Boston, on Tuesday the tenth day of December next, at ten o'clock in the forenoon, then and there to be examined touching a certain paper called the Massachusetts Spy, published the fourteenth day of November, 1771; whereof you are not to fail at your peril. Dated at Boston, the 16th day of November, 1771. "By order of the Governor, with the advice of Council,

THOMAS F UCKER, *Secretary.*"

Greenleaf did not obey the summons, and on the twelfth of December following, the Boston News-Letter, (Court Gazette) contained the proceedings of the Governor and Council of the tenth of that month in consequence thereof, viz.

"At a Council held at the Council-Chamber in Boston, Tuesday, December 10th, 1771.

"His Excellency having acquainted the Board at their last meeting, that Joseph Greenleaf, Esq; a Justice of the Peace for the county of Plymouth, was generally reputed to be concerned with Isaiah Thomas, in printing and publishing a News-Paper, called the Massachusetts Spy, and the said Joseph Greenleaf having thereupon been summoned to attend the board on this day, in order to his examination touching the same, and not attending according to summons, it was thereupon unanimously advised, that the said Joseph Greenleaf be dismissed from the office of a Justice of the Peace, which advice was approved of and consented to by his Excellency, and the said Joseph Greenleaf is dismissed from the said office accordingly. "A true copy from the minutes of Council.

THOMAS FLUCKER, *Secretary.*"

¹⁹ Boston Gazette.

A bill of indictment against Thomas for publishing an obnoxious libel was then prepared by the Attorney-General; the Chief Justice delivered a charge to the grand jury, in which he spoke of the intemperate and dangerous position of the press and the necessity for stopping the trouble before it assumed greater proportions; but the grand jury refused to indict. The court then directed the Attorney-General to file an information against Thomas, but such a storm of opposition arose from all quarters, on the ground that the rights and privileges of the individual were being destroyed, that the government reconsidered its position and decided that policy required that the matter be dropped.

Thomas then, to show that his position was not without precedent, reprinted in the issue of Oct. 10, 1772, from the Middlesex Journal²⁰ an address to the King, which was far more disloyal in tone and spirit, and yet which had passed unnoticed not only when published in England originally, but also when republished in New York. The Governor and Council attempted to take some action in reply, but failed, since no jury could be found to indict.

One more instance of oppression closes our account of the battle for the liberty of the press in Massachusetts. Benjamin Edes and John Gill published the "Boston Gazette and Country Journal," distinguished for its spirited political essays. Force's "American Archives"²¹ tells us that Gill in Sept. 1775 was imprisoned for twenty-nine days for printing sedition, treason, and rebellion. That the views of the publishers were revolutionary in their tenor may be judged from an article published in the Gazette commenting on an attack made on the printers of the Centinel; here is shown the boldness of the publishers in defense of the liberty of the press, even when that liberty was invaded by an attack on a political opponent.

"The attack made upon the printers of the Centinel on Saturday last, by a number of well-known persons, ought to excite the serious attention of all those, who duly regard the bulwark of our liberties, THE FREEDOM OF THE PRESS. If a printer for advertising that he intends to publish a certain book for the information, or merely the amusement or innocent diversion of his fellow-citizens, is to be beset and abused by a set of club-men, because the title-page does not happen to hit their taste, we may take a farewell of our independence, which we have gloriously

²⁰ Of England.

²¹ Vol. III, p. 712.

obtained, not without great expense of our treasure, and the loss of some of our best blood. A wound in so tender a point must surely prove fatal. Should the government appoint licensers of the Press, it would give just cause for offense. What right then, has any set of men, to forbid the printing of a book, till it has had their Imprimatur, or to punish a printer with club-law for advertising it?"

With the cases of Edes and Gill we reach the breaking out of the Revolution, the limit of our survey. The government had by this time become practically powerless in its attempts to control the press, for with the loss of the censorship, the only way in which it could act was through an indictment, and this required a jury friendly to the crown, something which was not at that time at all easy to obtain.

CHAPTER III

THE PRESS IN PENNSYLVANIA

IN the other New England colonies we find nothing of sufficient importance to justify an investigation, but when we pass to Pennsylvania we again come into a field where the battle for the liberty of the press was vigorously carried on. This was the second colony where the press was established, and the printer was William Bradford afterwards of New York. Coming to Philadelphia from England in 1682, then returning to England, and finally settling permanently in America in 1685, the first issue of his press, a "Kalendarium Pennsylvaniense, or America's Messenger, an Almanack," dated 1685, taught him to appreciate how carefully he must walk in order to avoid trouble. Opposite the days of the month he set down the remarkable events that had occurred on them in the past. Opposite one he printed "The beginning of Government here by Lord Penn." No sooner had the Secretary of the Council read these words in the advance sheets than he summoned Bradford to appear before the Council, where he was ordered to blot out the words "Lord Penn" and warned "Not to print anything but what shall have licence from ye Council."¹

The Society of Friends followed the lead of the Council and the minutes of the Friends' Meetings of the time give evidence of a desire on their part to share in the control.

"Quarterly Meeting 10 Month 5, 1687.

"Ordered by this Meeting that Wm. Bradford the Printer do show what concerns Friends or Truth before printing, to the Quarterly Meeting of Philadelphia; and if it requires speed, to the Monthly Meeting where it may belong.

And it is further Ordered by the Meeting that John Eakly, John Sheldon, Samuel Richardson and Samuel Carpenter do view or peruse the Almanack of Edward Eakin's writing, before it goes to be printed, on behalf of this meeting."²

¹ Min. of Provincial Council, Vol. I, p. 115.

² Quoted in Wallace. "Bradford Centenary" p. 59.

Thus we find Bradford under two masters, a censorship of State and Church. It is not difficult for us to understand the troubles that Bradford had to endure, under a Governor and Council jealous of any infringement on the royal prerogative, and a Meeting that would scrutinize every line printed for sign of heresy. And so Bradford found each year more troublesome than the last.

In 1689 he was in serious trouble with Governor John Blackwell, when as J. W. Wallace says,³ "He was the first man to establish the press in these Middle colonies. He was the first man, anywhere, so far as I know, to maintain its freedom against arbitrary power." It was at a time when there was much feeling between the Governor and the people as to their respective rights and Bradford printed the charter which Penn had given but, since he appears to have anticipated trouble, he put no imprint on the tract. However, as he was the only printer in the Province it required no deep thought to discover from whose press it must have proceeded. In what Bradford did there is no doubt that he, or those for whom he worked, had given to the Governor serious cause for complaint. To quote John Bach McMaster,⁴ "The Opposition, Quakers though they were, had carefully and deliberately distorted the Frame to suit their own ends. From one line in the Charter they dropped the word 'Jurisdiction.' From another which read 'A Committee of the Provincial Council,' they took away 'of the Provincial Council.' But the most serious change of all was in the line which declares that by the Council and Assembly 'All laws shall be made, officers chosen and publick affairs transacted.' From this the words 'officers chosen' were carefully omitted."

The matter was first discussed in the Council in whose Minutes for May 9th, 1689 we find the following entry: "The Governor acquainted the Board that he had this morning received a printed paper, (called the frame of the Government of this Province etc.) brought unto him by the Secretary, who said he had it from Wm. Clark, a member of this board, and that he had it from Jos. Growdon; who being present, the Governr. desired to know of him how he came by it.

Jos. Growdon answered, Wm. Clark had a little book of me. The Governr. asked him again how he came by it, and told him it was a high presumption in any man, especially a member of that Board, to promote

³ "Bradford Centenary," p. 49.

⁴ "A Free Press in the Middle Colonies," Princeton Review, Vol. I.

the publishing of any paper of such concerne without direction, Especially for that it was false in so fundamental a poynt as that was, and that unless he could cleare himselfe he was liable to Censure The Govrr. Said that he looked upon it, as being of a dangerous nature (in the present condition of our affayrs, and distractions the Countrey were in) to have such a paper published; not only for that it was false, But for that the Proprietor had declared himself against the using of the printing presse; and especially for that there seemed to him to be several things therein containd which though they might be fit for the people of this Province to know (and that they might do by having resort to the Keeper's, where it was lodged,) but would be of ill consequence to be known to others, and might possibly bring the Proprietor's title in question."

Bradford was summoned to appear before the Governor and Council, when the following conversation ensued;⁵

The Governor having taxed him with the printing, Bradford replied;

Bradford.—“ Since thee came here, Governour, I never heard of anything to the contrary, but that I might print such things as came to my hand, whereby to get my living; it is that by which I subsist; nor do I know of any Imprimatur appointed.”

Governor.—“ Sir, I am Imprimatur; and that you shall know. I will bind you in a bond of £500, that you shall print nothing but what I do allow of; or I shall lay you fast.”

Bradford.—“ Governour, I have not hitherto known thy pleasure herein, and therefore hope that thou wilt judge the more favorably, if I have done anything that does not look well to some.”

Governor.—“ Sir, I have particular order from Governour Penn for the suppressing of printing here, and narrowly to look after your press; and I will search your house, look after your press, and make you give in £500 security to print nothing but what I allow, or I'll lay you fast.”

William Penn's known relations with King James II, and the attitude of the latter toward the liberty of the individual, and his attempts in England to control the press, may explain this position which Penn had assumed. A foreshadowing of it appears in the Minutes of the Provin-

⁵ Wallace. “Bradford Centenary,” p. 50. Original in Bradford's handwriting in possession of N. Y. Hist. Society.

cial Council, 23d day, 3d month, 1683,⁶ Wm. Penn himself presiding. "It was proposed to have an attested Coppy of the Laws printed. After some debate the Govr. put the Question, and it was carried in the Negative, they should not be printed."

Under such restrictions as these we are not surprised to find that the young man seriously considered the advisability of returning to England, and that he applied to and received from the General Meeting of Friends a certificate of good character and dismissal to England. But so much dissatisfaction was expressed on all sides at the prospect of his leaving Philadelphia that the General Society at its next meeting voted him an annual subsidy of £40, and agreed to give him enough work to warrant his remaining. The idea of returning to England seems now to have been finally laid aside.

Three years later, in 1692, George Keith, a member of the Society of Friends, became involved in a religious dispute and parties were soon formed. Keith, in order to present his position to the General Meeting of the Friends, wrote a pamphlet, setting forth his views and claims, and this pamphlet was published by Wm. Bradford, who belonged to his faction. For this Bradford was arrested, and put in prison, and his press and tools seized by the sheriff. John McComb, for having two copies of the pamphlet in his possession, was put in prison along with Bradford. The Warrant for committing Bradford and McComb read in parts as follows: "Whereas, Wm. Bradford, printer, and John McComb, taylor, being brought before us on an information of Publishing, Uttering, and Spreading a Malitious and Seditious paper, intituled An Appeal from the Twenty-Eight Judges to the Spirit of Truth etc. Tending to the disturbance of the Peace and the Subversion of the Present Government, and the said Persons being required to give Securitie to answer it at the next Court, but they refused so to do. These are therefore to require you to take into your Custody etc."

When, at the next session of the Court Bradford was brought to the bar, he was presented as the printer of the seditious paper "The Appeal" which was declared to have a tendency to weaken the hands of the government; and in the second place it was charged that he had printed it without putting his name on it. When the jury were called he challenged two on the ground that they had formed and expressed opinions, not to

⁶ Min. Prov. Council I, p. 18.

the fact of his having published the paper, but as to its being of a *sedition character*; opinions which he himself had heard them express. The following discussion then ensued: Prosecuting Attorney "Hast thou at any time heard them say that thou printed the paper? for that is only what they are to find."

Bradford.—"That is not only what they are to find. They are to find also whether this be a seditious paper or not, and whether it does tend to weaken the hands of the magistrates."

Attorney.—"No, that is a matter of law, which the jury is not to meddle with, but find whether Wm. Bradford printed it or not."

Justice Jennings.—"You are only to try whether Wm. Bradford printed it or not?"

Bradford.—"This is wrong; for the jury are judges in the law as well as in matter of fact." ✓

Justice Cook.—"I will not allow these exceptions to the jurors."

On this David Paul Brown of the Philadelphia Bar remarks: "We have, therefore, in this trial, evidence of the fact, interesting to the whole press of America, and especially interesting to the Bar and Press of Pennsylvania, that, on the soil of Pennsylvania, the father of her press asserted, in 1692, with a precision not since surpassed, a principle in the law of libel, hardly then conceived anywhere, but which now (1856) ✓ protects every publication in this State and in much of our Union: a principle which English judges, after the struggles of the great Whig Chief Justice and Chancellor, Lord Camden, throughout his whole career, and the brilliant declaimer, Mr. Erskine, were unable to reach; and which, at a later day, became finally established in England only by the enactment of Mr. Fox's Libel Bill in Parliament itself."⁷

The jury did not agree, and Bradford was held over to the next Term. At this time he was not tried again, but a request by him that his tools and press be returned to him was denied. Then Penn was deprived of the province, and when Governor Fletcher arrived in Philadelphia and held his Council, we find a petition from Bradford in the matter.⁸ "Upon reading the petition of Wm. Bradford, printer, directed to his Excell. wherein he sets forth that in September last his tooles and Letters

⁷ David Paul Brown, *The Forum*, Vol. I, p. 281.

⁸ Min. Provincial Council, Apr. 27, 1693.

were Seized by order of the Late Rulers, for printing some books of Controversie, and are still kept from him, to the great hurt of his family, and prays Reliefe. His Excell. did ask the advice of this board. The Severall members of Councill being well acquainted with the truth of the petitioner's allegations, are of opinion, and doe advise His Excell. To Cause the petitioner's tooles and Letters to be restored to him.

Ordered that John White, Sheriffe of Philadelphia, doe Restore to William Bradford, printer, his tooles and Letceers, taken from him in September Last."

In the same year Bradford, on the advice and even solicitation of Governor Fletcher, removed to New York where we shall meet with him again, when we study the condition of the press in that colony.

Andrew Bradford, the son of that Wm. Bradford of whom we have just written, was born in Philadelphia in 1686, and, after going to New York with his father, returned to Philadelphia in 1712 where he carried on the business of printing, having, through his father's influence, secured a press belonging to the Society of Friends. Here he was appointed "Printer to the Province," and on Dec. 22, 1719 he began to print "The American Weekly Mercury" the first newspaper in the Middle States, where his father had founded the first press. In 1721 he in his turn became involved in a dispute with the law officers of the Crown. At this time, a discussion going on in regard to the finances of the Province, there appeared in the Mercury of Jan. 2, 1721 (O. S.) the following paragraph:

"Our General Assembly are now sitting, and we have great expectations from them, at this juncture, that they will find some effectual remedy to revive the dying credit of the Province, and restore us to our former happy circumstances."

In regard to this paragraph we find the following in the Minutes of the Provincial Council for Jan. 19, 1721. (O. S.) "Upon a motion made, that Andrew Bradford, Printer, be examined before this Board concerning the publishing of the late Pamphlet, entituled Some Remedies proposed for the restoring the Sunk Credit of the Province of Pennsylvania, as also of the Weekly Mercury of the 2d of January instant, the last paragraph whereof seems to have been intended as a reflection upon the Credit of this province: it is ordered That he the said Printer, have notice to attend this Board at the next meeting of Council." And on

Feb. 1st we read "The Board being informed that Andrew Bradford, the Printer, attended according to order, He was called in and examined concerning a late Pamphlet, entituled Some Remedies proposed for restoring the Sunk Credit of the Province of Pennsylvania; Whereupon, He declared that He knew nothing of the printing or of the publishing of the said Pamphlet; And being reprimanded by the Governor for publishing a certain paragraph in his News-Letter, called the American Mercury of the 2d of January last, He said that it was inserted by his Journey-Man, who composed the said Paper, without his Knowledge and that he was very sorry for it, and for which he humbly submitted himself and asked Pardon of the Govr. and the Board:—Whereupon the Governour told him, That he must not for the future presume to publish anything relating to or concerning the affairs of this Government, or the Government of any other of his Majesty's Colonies, without the permission of the Governour or Secretary of this province, for the time being, And then he was dismissed and the Council adjourned."

For eight years Andrew Bradford kept free from any trouble with the government, but in 1729 he was once more summoned to appear before the Council. At this time Benjamin Franklin was contributing to a series of articles appearing in the Mercury, and afterwards continued by others under the common name of Busy Body. In No. 31, published just before the date of an election, he said: "To the friends of liberty, firmness of mind and public spirit are absolutely requisite; and this quality, so essential and necessary to a noble mind, proceeds from a just way of thinking that we are not born for ourselves alone, nor our own private advantages alone, but likewise and principally for the good of others and service of civil society. This raised the genius of the Romans, improved their virtue, and made them protectors of mankind. This principle, according to the motto of these papers, animated the Romans.—Cato and his followers—and it was impossible to be thought great or good without being a patriot; and no one could pretend to courage, gallantry, and greatness of mind, without being first of all possessed with a public spirit and love of their country."

Of this Essay Mr. David Paul Brown⁹ remarks, "It was well written, and though bold in parts, an air of pleasantry took from it much aspect of malignity. Indeed the whole piece is subdued, below the standard even of orthodoxy in modern democratic politics, and contains

⁹ Forum I, 283.

much which deserves and would receive at all times, the admiration of every party."

The matter was at once taken up by the government, as the following extract for Sept. 20, 1729 from the Minutes of the Provincial Council shows:

"The Governor acquainted the Board that he now called them together to lay before them a News paper published in this Province, printed and sold by Andrew Bradford, numbered 506, in which a Letter signed Brutus or Cassius, or both, appears to reflect on the King and government of Great Britain, and to incite the Inhabitants of this Province to throw off all subjection to the regular and established Powers of Government. And the same being read and considered by the Board, it is their Opinion that it is a wicked and seditious Libell, tending to introduce Confusion under the notion of Liberty, and to just regard due to
✓ Persons in Authority. 'Tis therefore Ordered that the said Bradford be immediately taken into Custody, and examined by the Mayor and Recorder of this City, or any other two Justices of the Peace, and that his Dwelling House and Printing Office be searcht for the written Copy of the said Libel, that the author may be discovered, and that the Attorney General commence a prosecution against the said Bradford for printing and publishing the same.

N. B.

This order being executed, and the Original Copy being found, it appeared to be wrote by one Campbell, a Parson of dissolute character, who had lived for some time in Newcastle County, but his scandalous behaviour proving intolerable to his Hearers there, he removed to Long
✓ Island, from whence he sent that Paper with others of the same strain, by the Post to Andrew Bradford, who without considering or knowing its tendency, printed it as he did other Papers in his Mercury. His ignorance therefore, gave some Abatement to the Prosecution; he was however committed, and then Bound over to the Court."

The matter seems to have ended here. At least in the next issue of the Mercury, Bradford makes no apology save that he thought the remarks prefaced to the article complained of had been sufficiently clear to prevent any misunderstanding. Following this, comes another article in a tone much like that of the preceding one and prefaced by the statement that it had been set in type before the action taken by the Lieutenant

Governor Gordon, and the Council, and that he, Bradford, saw no reason to make any alteration in it before sending it out to the public. It is probably owing to Andrew Bradford's well recognized prominence in the community and his reputation for sobriety of speech and uprightness of character that the matter was suffered to drop. But from this time it is easy to discern that the press in Pennsylvania had greatly lost its dread of government supervision and from time to time criticized without any reproof, the action of those in office, in a way and with language which a few years earlier would have subjected the printer and the writer alike to most unpleasant consequences.

In 1758 Wm. Moore, then President of the Court of Common Pleas for the County of Chester, became involved in a dispute with the House of Assembly of Pennsylvania and Moore presented an Address to the Governor which was afterwards translated into German and published in a German newspaper in Philadelphia under the direction of the Rev. Dr. Wm. Smith, son-in-law of Judge Moore and at that time Provost of the University of Pennsylvania.¹⁰ This Address the Assembly decided to be a libel and ordered the arrest of Moore and Smith. Moore was imprisoned for writing the Address, and Smith (although it was shown that it had been published in the two English papers printed in Philadelphia and that no objection had been made by the Assembly), was ordered imprisoned for translating it into German and causing it to be published.

On being informed that he could escape imprisonment by making an apology, he replied, "that he thought it was his duty to keep the Dutch press as free as any other press in the Province; and, as he was conscious of no offense against the House, his lips should never give his heart the lie; there being no punishment, which they could inflict, half so terrible to him as the thought of forfeiting his veracity and good name with the world."¹¹

He afterwards went in the same year (1758) to England, to appeal before the Privy Council and was successful in his suit.

Wm. Bradford, grandson of the Wm. Bradford who had set up the first printing press in Pennsylvania, and nephew of Andrew Bradford,

¹⁰ Penn. Mag. of Hist. Vol. IV, p. 373, Art. on Rev. Wm. Smith, D. D.; also Horace Wemyss Smith, "Life and Correspondence of the Revd. Wm. Smith, D. D., Vol. I."

¹¹ American Magazine, Jan. 1758. Journal of House of Assembly of Pennsylvania for 1757 and 1758.

began in Philadelphia in 1742 the publication of a newspaper called "The Pennsylvania Journal," in which he advocated in a style gradually increasing in intensity and clearness of statement the rights of the colonies as opposed to Great Britain. The subject of the liberty of the press would naturally be of importance to a member of the Bradford family, and in the issues of Sept. 1766 Bradford engaged in a controversy which gave him an opportunity to express his views. The Journal of Sept. 4, published a number of letters from John Hughes (a member of the Legislature and also lately appointed by the King to collect the stamp-tax), to the Commissioners of the Stamp Office, which placed Hughes in a very unfavorable light before his fellow countrymen. Hughes declared these letters to be forgeries and brought an action against the publishers, Wm. Bradford and his son Thomas. When it came to the point Hughes dropped the case, but it furnished the Bradfords with an opportunity which they did not fail to take advantage of. Speaking of the action, in their issue of Sept. 11th, 1776, they say it is but a "fresh instance of his (Hughes) regard to the liberties of his fellow-subjects, in his impotent, but ill natured attempt against the Liberty of the Press." . . .

They proceed to say:—"His suing the printers of the Pennsylvania Journal, for printing an exact copy of his own letters, is no more than an ill-judged effect of that insatiable passion, which he has, to trample upon the most sacred rights and privileges of British subjects in America. The letters themselves, which are but the history of his own conduct for a considerable time past, plainly discover how heartily and passionately he wished for the favourable opportunity which would put it into the power of this excellent patriot, to execute the detestable STAMP ACT, which no American can mention without abhorrence, and to reduce the free-born sons of Britain to a most wretched state of slavery. What else can be the meaning of his barefaced Falsehood, in representing North America in a state of absolute rebellion against the best of Kings, and in using all his feeble endeavors to excite his Majesty and his ministers to send over an armed force to quell us, as he modestly terms it? But such is his insensibility to all the dictates of Honour or Publick Virtue, that to compleat his character he would now attempt to demolish the Liberty of the Press, that invaluable privilege of a free people; because through that channel his hidden arts are brought to light.

'Tis but a piece of justice to the public, to let them know his last effort to prop his sinking character, which has long labored under violent

suspicions. He procured a writ for the printers of his letters, on Saturday last, which was executed by the Sheriff on Monday morning following; as twelve hundred pounds damages were marked upon the writ, the printers sent him a notice about twelve o'clock, to appear before a Magistrate to shew cause of action; but he refused to appear. At 4 o'clock the same afternoon they sent him another notice, to appear for the same purpose at 10 o'clock the next day, and informed him, that unless he appeared, they would move for a discharge from the arrest. But such was the consciousness of his guilt, that he refused again to appear, and as he could not be compelled by law to shew cause of action, the arrest was accordingly discharged. We are only the printers of a free and impartial paper, and we challenge Mr. Hughes and the world, to convict us of partiality in this respect, or of even an inclination to restrain the freedom of the press in any instance. We can appeal to North-America not only for our impartiality as printers, but also for the very great advantages derived by us very lately from the unrestrained liberty, which every Britain claims of communicating his sentiments to the public thro' the channel of the press. What would have become of the liberties of the British in North-America, if Mr. Hughes calls on Great Britain had been heard, to restrain the printers here from publishing what he is pleased to stile inflammatory pieces, and if every prostitute scribbler, and enemy to his country, had been suffered without control from the pens of true patriots, to rack their distempered brains, to find out arguments to gull a free-born people into a tame submission to perpetual slavery, and to impose their flimsy cobwebs upon us, instead of solid and substantial reasoning? To the freedom of the press in America, we may in a great measure attribute the continuance of those inherent and constitutional privileges, which we yet enjoy and which every Briton, who is not enslaved to private or party interests prefers to his life. We cannot therefore doubt, but that the happiness, which now reigns through all the British plantations, will inspire every friend of his country with an honest and generous indignation against the wretch that would attempt to enslave his countrymen by restraints on the press."

With this spirited statement we end the struggle for the Liberty of the Press in Pennsylvania. It is not composed of as many parts as that of Massachusetts, but the attitude assumed by Bradford at the first is continued by his successors, and the press of Pennsylvania ever presented a bold and unyielding front to attacks whether they proceeded from Church or State.

CHAPTER IV

THE PRESS IN NEW YORK

THE desire to have a printing press, on which laws and proclamations might be printed for the information of the people, was as strong in New York as in the other colonies established along the Atlantic coast, but unlike the general attitude assumed by colonial governments toward the press we find in New York that the head of the colony was the person chiefly instrumental in its establishment.

Francis Lovelace, the second English Governor of New York, when sending to Long Island some books printed in England for the Indians, wrote: "I am not out of hopes, ere long, to have a printer here of my own; having already sent to Boston for one; but whether I shall speed or no is uncertain."¹

As we hear no more of the matter it is probable that the inducements Lovelace had to offer did not suffice to tempt the Boston printers. It seems that in this matter Lovelace was acting in his own initiative, since we find the attitude of the home government in the matter clearly stated in the Instructions issued to the Governors. In 1686 those to Governor Dongan contain the following clause: "For as much as great inconvenience may arise by the liberty of printing within our province of New York, you are to provide by all necessary orders, that no person keep any press for printing; nor that any book, pamphlet, or other matters whatsoever, be printed—without your special leave and license first obtained."² This clause appears in Instruction after Instruction given to the succeeding Governors, e. g. to Andros,³ to Fletcher,⁴ Sloughter,⁵ to Bellomont,⁶ and to Hunter.⁷

The accession of William and Mary brought with it a certain increase in the amount of personal liberty enjoyed by the people, and the

¹ Orders, Warrants, Letters &c., Vol. II, N. Y., at Albany, quoted in Wallace, Bradford Centenary, p. 60.

² Doc. Rel. to Col. Hist. of N. Y., Vol. III, p. 375.

³ Doc. Rel. Col. Hist. N. Y., III, 548.

⁴ Same, III, 824.

⁵ Same, III, 691.

⁶ Same, IV, 290.

⁷ Same, V, 142.

ideas now prevalent show themselves in the position assumed by the new Governor, Benjamin Fletcher, toward the printing press. It will be remembered that in 1692 Governor Fletcher, while in Philadelphia, had ordered on petition of Wm. Bradford that his press and tools of trade (which had been seized by the sheriff in the case in regard to the printed address written by George Keith), should be restored, and it may be conjectured that it was at this time that Governor Fletcher conceived the idea of bringing Bradford to New York.

In the Minutes of the Legislative Council of New York for Mar. 23, 1693-4 occurs the following resolution: "If a Printer will come and settle in the City of New York for the printing of our Acts of Assembly and Publick Papers, he shall be allowed the sum of £40 current money of New York per annum for his salary and have the benefit of his printing, besides what serves the publick."

This invitation Bradford accepted, and on his arrival in New York was appointed Royal Printer on April 10th, and we find his name included among the officers of the Crown,⁸ in a list of April 20, 1693. That a new interest in the carrying on of the government is being awakened among the people and that the legislative body is cognizant of it is evidenced from the Order passed in the Legislative Council on Oct. 20, 1694. "Ordered that Coll Steph Cortlandt, Coll Nich Bayard, Chidley Brooke Esqr, Wm. Nicholl Esqr. and William Pinhorn Esqr. be a Committee of this board to consider what papers and messages passed between his Excell. and Council and Assembly this sessions are propper to be printed and published for the satisfaccon of the people." No report is received from the Committee and as the session ended a few days later, the matter seems for the time to have been dropped.

In the next session there is a further advance. Governor Fletcher and his Assembly had become involved in a dispute in regard to the Muster Rolls and the pay for the men serving on the frontier against the Indians. The stages by which the demand for publicity made by the Assembly advanced are shown in the following extracts:

"General Assembly. Apr. 12, 1695. A. M.

"Ordered, That this House do address his Excellency for leave to print the Journal of this House this Sessions; and that the Clerk of this House do acquaint the Printer therewith; and that Capt. Filkin and Capt. Rensselaer do wait upon his Excellency with this address."

⁸ Doc. Rel. Col. Hist. N. Y., IV, 760.

“General Assembly—Apr. 13, 1695—A. M.

Ordered, That the Speaker of this House take care of the Minutes of this House, and endeavor to get them printed.”

Replying to these resolutions Governor Fletcher in his address to the Assembly says,⁹ “You now desire license to print the Votes. Mr. Speaker knows at the opening of the sessions, if I may call it one, I told him they might be printed *de die in diem*; but it never was asked before.”

On June 22d, 1695 the Assembly follow up this permission by the following:

“Ordered, That his Excellency be addressed to order the Printer to print the Daily Votes of this House at the publick charge; and that Mr. Read and Mr. Sebring do wait upon his Excellency with the said address.

“Mr. Read and Mr. Sebring, returned from his Excellency and reported that his Excellency is very willing the daily Votes of this House, should be printed at the public Charge, but hopes that the House (before the end of the Session), will allow the Printer something of farther encouragement than that already established.”

“Ordered, That the Votes of this House be daily Printed and that the Speaker Issue out his warrant, to the King’s Printer, to print the same, at the public Charge accordingly.”

In the Minutes of July 3d, 1695 we read:

“The House of Representatives, now convened in General Assembly address his Excellency and Council, and pray that they will allow, unto William Bradford, his Majesty’s Printer for this Province, the yearly salary of Twenty Pounds, current money of this Province, over and above the salary already allowed him, by his Excellency and Council.”

Next day the Council took action;¹⁰

“His Excell. did order the reading of an Address from the Assembly, wherein they desire an addition of Twenty Pounds per annum to the salary of the printer.”

In 1698 the Earl of Bellomont succeeded Col. Fletcher as Governor and the attitude of the government toward the press became much more stern. But after the coming of Lord Cornbury as Governor, Bradford resumed to a great extent his former relations with the government and during his life so ordered his actions as to become involved in no trouble. Of him Wallace in ending his Address at the Bradford Centenary said

⁹ Apr. 13, 1695, Minutes Legislative Council.

¹⁰ Minutes, Legislative Council, 4 July, 1695.

"Bradford, we know first planted the printing press in these regions. He first maintained (in Philadelphia) it rights against arbitrary power. . . . What liberty was it the printer exercised, of old? His was a virtuous liberty. . . . He worshipped Freedom, but he never thought of Freedom as dissociated with Government. Freedom and Government; Government and Freedom; complementary; never to be parted. In his long and active life, passed in many regions and where divers rules prevailed, it was his fortune to be sometimes in opposition to the ruling powers, and sometimes their trusted advocate. But in opposing administrations he respected the principles of government. In devotion to place, he never suffered violence to the spirit of Liberty."

During the administration of Lord Bellomont the interests of Leisler's faction in the province were in the ascendant, and those who were of the aristocratic party were, as far as possible displaced from positions of trust and honor. Of this latter party one of the most prominent was Col. Nicholas Bayard, a member of the Council and a large landowner. Him Lord Bellomont removed from the Council, the ground for this action being that "he had advised the printing of a scandalous and malicious pamphlet entitled 'A Letter from a Gentleman in Boston,' casting odium on Leisler."¹¹ On Lord Bellomont's death Lieutenant Governor Nanfan assumed the government. He was under the influence of the Leislerian party, and it was therefore with much delight that Bayard and his friends heard that the King had appointed Lord Cornbury to succeed Lord Bellomont. Addresses were accordingly sent by them to the King, the Parliament, and Lord Cornbury. In the addresses there were reflections on Lord Bellomont and Nanfan, the latter being accused of resorting to bribery to have measures passed. On Jan. 16, 1701-2 the Lieutenant Governor and Council¹² ordered Alderman Hutchins (in whose custody the Addresses were) to attend and deliver them. On refusal he was committed to prison, bail being refused.

Advantage was taken by Nanfan and his friends of certain statements in these petitions, and based on a very loose paragraph (in an Act drawn up by Bayard himself and passed by the Assembly in 1691), stating that "whatsoever person or persons shall by *any manner* of way or upon any pretense whatever endeavor by force of arms or other ways to disturb the peace, good and quiet of their Majesties' government, shall be

¹¹ Dunlap, Hist. N. Y., I, 239.

¹² Minutes of Council of that date, and Howell State Trials, XIV, p. 473.

deemed and esteemed as rebels and traitors unto their Majesties and incur the pains, penalties, and forfeitures as the laws of England have for such offenses made and provided," Bayard was then committed to prison as a traitor. The trial which followed is given in Howell's State Trials, Vol. XIV.

The Attorney General, Broughton, did not appear in the case, having given an opinion in favor of the accused when called upon by Lieutenant Governor Nanfan. The indictment (which was objected to as being, first, brought in by a Grand Jury not entirely composed of citizens, and secondly, as not having been signed by the twelve members of the jury), recites that, "He, Nicholas Bayard, by conspiring as aforesaid . . . did use divers indirect practices and endeavors, to procure mutiny and desertion among the soldiers in pay, belonging to his Majesty's fort and garrison of Fort William Henry, in or near the said city and county of New York aforesaid, and did draw in numbers of them, the said soldiers and others, to sign false and scandalous libels against his Majesty's said government as it is now, and hath for several years last past been established in this province; which said libels, by the procurement of the said Nicholas Bayard as aforesaid, were signed by the said soldiers and others, and were likewise signed by him, the said Nicholas Bayard; in one or more of which said libels, among other things highly reflecting on the past and present administration of the government under his Majesty in this province, it is insinuated and declared, that his Majesty's subjects in this province are, and have been for some years last past, by persons entrusted with the administration of the said government under his Majesty, oppressed; and that the said government hath been, and is rendered cheap and vile in the eyes of the people, and also that the present General Assembly of this province is not a lawful assembly."

The defense strongly asserted the right of petitioning the King, holding that in no other way could a subject in the colonies oppressed by those in power obtain justice, and that treason consisted only in those things defined in 25 Ed. III, wherein no mention of such an act as charged against Col. Bayard is made.

After admitting the writing of the Address, the defense brought forward for the first time the argument that in a case of libel the jury are judges of the law as well as of the fact,—a most important principle, to be reiterated later in the Zenger case and finally established in Eng-

land in the Fox case. In making this point Mr. Emot, as counsel for the defendant, said:

"I had almost forgot to beg leave of the Court to apply myself to the gentlemen of the jury, to obviate some objections, or rather a vulgar error, that usually hath crept in amongst them on trials, and particularly upon indictments: which is, they do believe.

That if the matters of fact alleged in the indictment be but proved, they are to have no regard for matters of law; which I take to be a very great and dangerous error in them.

For though it be true and must be granted, that matters of fact are the most common and proper objects of the jury's determination, and matters of law that of the judges; yet as the law ariseth out of, and is interwoven and complicated with fact, it cannot but fall under the jury's consideration."

It is also interesting to note that we have here a prisoner on trial for felony allowed counsel, being a century before the privilege was allowed in England. The prisoner was found guilty, as charged in the indictment, of rebellion and treason, and as having procured the signing of libels against the government. The arrival of Lord Cornbury released Bayard and later an order of the Privy Council declared the whole proceedings illegal and void. Wm. Atwood who presided at the trial as Chief Justice fled from the colony and eventually reached England. In 1703 a Joint Committee was appointed by the Legislative Council and General Assembly¹³ "to consider a Print or papers brought into the colony from Boston in the case of Wm. Atwood." As no further record in regard to the matter is found, it may be supposed that the matter was not considered of sufficient importance to merit further notice.¹⁴

In 1693 Saml. Mulford was a Justice in Suffolk county.¹⁵ He seems to have had a peculiar faculty for embroiling himself with the government, being in a chronic state of opposition to any and every measure proposed. From 1705 to 1720 he was a representative in the General Assembly from the county of Suffolk, and took an active part in the quarrel over the rights of the Crown in the whale fisheries off the coast of Long Island. He was ultimately arrested for "trover for con-

¹³ Minutes, General Assembly, May 14, 1703.

¹⁴ On Atwood, vide C. P. Daly in "Green Bag" for Mar. Apr. and May, 1895.

¹⁵ Doc. Rel. Col. Hist. of N. Y., IV, 27.

verting the Queen's goods to his own use" in refusing to pay the tax of one-tenth, and judgment was given against him.

On April 2d, 1714, shortly after the opening of the third session of the Fifteenth Assembly he made a speech (of which no record is found in the Minutes of the Assembly) "putting them in mind," as he tells us ¹⁶ "of some ill measures I was informed were taken, and to set things in their true light, that justice might be done among us. There was a Discourse of having it printed, but the question was not put; however a Copy was desired and taken, which was printed."

This speech was printed, apparently with the approval of the members of the Assembly for no action was taken by the body. But when the Sixteenth Assembly came together we find the following in the Minutes of June 2, 1715:

"A Motion was made that Capt. Mulford give his reasons to this House, why he printed a Speech, formerly by him made to the General Assembly of the Province, without leave of the House.

A Motion was made and the Question being put, That Capt. Mulford give an account now? It was carried in the affirmative.

Capt. Mulford being desired by Mr. Speaker to give his Reasons why he printed his said Speech, proceeded to offer his Reasons and then withdrew.

Then the House proceeded to take the same into consideration.

✓ A Motion was made, That Capt. Mulford be expelled this House for printing a Speech, formerly made to the General Assembly, without leave of the House, in which are many false and scandalous Reflections upon the Governor of the Province. It was carried in the Affirmative.

Ordered, That Capt. Mulford be expelled from the House for the said offense."

On the 9th of June the Speaker issued his Warrant for the election of a member from Suffolk to take Capt. Mulford's place, but no action ensued as the Assembly was prorogued on July 21st and dissolved a month later.

Meanwhile an indictment charging Mulford with "a High Mis-

¹⁶ Original document quoted in Ross. Hist. of Long Island, I, p. 731.

demeanor, acting contrary to his duty of Allegiance, in manifest Contempt of his Majesty, and the Governor of these Provinces, etc., had been lodged with the Grand Jury which, however, indorsed it, "Ignoramus." An information was then lodged by the Attorney General and on that he was tried in the Supreme Court. His plea of privilege of the House was overruled and the case carried from term to term without a decision being rendered.

When the Seventeenth Assembly came together on July 5, 1716, Capt. Mulford was again returned as a member from Suffolk. On June 16, he set forth his case to the House, and the following record appears in the Minutes.

"A motion was made, and the Question was put, That Capt. Mulford put the Speech he made this Day in the House, into the Hands of the Clerk of this House.

It was carried in the Affirmative.

The matter excited so much attention that the Assembly finally drew up an address to the Governor, Robert Hunter.

"To His Excellency the Governor."

"The Humble Address of the General Assembly of New York."

"May it Please your Excellency.

The Assembly being deeply sensible of the Damage and Inconveniency Mr. Samuel Mulford, A Member of this House, suffers and undergoes, by occasion of a Prosecution against him in the Supreme Court, for Printing and Publishing a Speech, formerly made by him in Assembly; are humble suitors to your Excellency, to give Orders that Mr. Mulford, in regard to his great Age, distance of habitation from this City, and other considerations, may be freed and discharged from the said prosecution in the Supreme Court.

To this the Governor replied:¹⁷

"Although the Gentleman named in the Address lay under a Prosecution, not for a Speech made in their House, But for Publishing and dispersing a false and Malitious Libel, against the Government, (for So it was Termed by the House of Representatives) tending to alienate the affections of the Subjects from the Government, and raising groundless

¹⁷ Minutes, Legislative Council, Aug. 21st, 1716.

Jealousies in the minds of the people and Indeed it had in some measure had that effect. Yet to show them what regard he had, and ever Should have to any applications made to him by that House, So soon as Capt. Mulford should apply to him in a Dutifull manner for what was desired, for as yet he had applied in no manner at all, he would comply with what they had desired of him, and without that he believed that ne'er a one of them could Expect it."

Mulford refused to submit and went to England where he presented his case so ably that Governor Hunter was ordered by the Lords of Trade ¹⁸ to cease all proceedings against him.

On his return to New York he took his seat in the House, but on Oct. 26, 1720, was once more expelled, and probably on account of age was not returned when the new Assembly met in 1726.

In 1734 the enmity between the two political parties in the Province, —the aristocratic, which supported Governor Cosby and was in turn supported by him, and the popular party, in which the leaders were Wm. Smith and James Alexander, had reached a point where little could be needed to introduce open violence. The Gazette, published by Wm. Bradford, was at this time a staid sheet, claiming to be neutral in party strife, but naturally under the circumstances leaning to the side of the government. To offset its influence the New York Weekly Journal was established under the editorship of John Peter Zenger in the interest of the popular party. Knowing that the strength of the party must lie in the support of the people and that this support could be given effectively only by a people who understood the issues involved, the writers for the Journal put forward the most liberal views in regard to the liberty of the press. It was not a subject which many at that time understood or took any interest in; but the effect of the long continued campaign of articles was to spread the principle not only in the province of New York but even as far away as Charleston where the matter was warmly discussed.

In the fall of 1734 the annual election of aldermen resulted in a triumph for the popular party. The court party turned on Zenger for revenge, and the Chief Justice, De Lancey, attempted to obtain an indictment against Zenger on the ground that he was provoking the citizens to commit acts of treason against the government. The grand jury having refused to do his bidding, the Governor next turned to the Gen-

¹⁸ Doc. Rel. Col. Hist. N. Y., Vol. V, p. 505.

eral Assembly. In its Minutes for Oct. 17th we find the following record:

“ A Message from the Council by Philip Cortlandt, in these words, to wit: ‘ That board having had several of Zenger’s Weekly Journals laid before them, and other scurrilous papers, tending to alienate the people of this province from his Majesty’s government, to raise seditions and tumults among the people of this province, and to fill their minds with a contempt of his Majesty’s government; and considering the pernicious consequences that may attend such growing evils, if not speedily and effectively put a stop to: And conceiving that the most likely method to put a stop to such bold and seditious practices, to maintain the dignity of his Majesty’s government, and to preserve the peace thereof, would be by a Conference between a Committee of this board, and a Committee of the Assembly; it is therefore ordered, that the gentlemen of this board, now assembled, or any seven of them, be a Committee to join a Committee of the House of Representatives, in order to confer together, and to examine and enquire into the said papers, and the authors and writers thereof.’

Which Message being read;

Ordered; That the Members of this House, or any fourteen of them, do meet a Committee of the Council, at the time and place therein mentioned.”

On Oct. 18th the matter again is taken up:

“ Mr. Gerritsen, from the Committee of this House, reported, That they had, last Night, met the Committee of the Council, on the subject Matter of their Message of Yesterday, to this House, and that after several Preliminaries between the said Committees, the Gentlemen of the Council reduced to writing, what they requested of this House, and delivered the same to the Chairman, who delivered it at the Table; and being read, is in the Words following:

‘ At a Committee of the Council, held the 17th of October, 1734.

Present

Mr. Clarke,	Mr. Kennedy,
Mr. Harrison,	Mr. Chief Justice,
Dr. Colden,	Mr. Cortlandt,
Mr. Livingston,	Mr. Lane,
Mr. Horsmanden.	

The Matters we request your Concurrence in, are that Zenger's Papers, No. 7, 47, 48, 49, and two printed Ballads, which were read, and which we now deliver to be burnt by the Hands of the common Hangman, as containing in them many things Derogatory of the Dignity of his Majesty's Government, Reflections upon the Legislature, and upon the most considerable Persons in the most distinguished Stations in this Province, and tending to raise Sedition and Tumults among the People thereof. That you concur with us in addressing the Governor to issue his Proclamation, with a Promise of Reward, for the Discovery of the Authors or Writers of these seditious Libels.

That you concur with us in an Order for prosecuting the Printer thereof.

That you concur with us in an Order to the Magistrates, to exert themselves in the execution of their Offices, in order to preserve the public Peace of the Province.

Per Order of the Committee.

FREDERICK MORRIS,
Dep. Col. Council.'

Mr. Garritsen delivered likewise to the House, the several Papers referred to in the said Request.

Ordered, That the said Papers be lodged with the Clerk of this House, and that the Consideration thereof, and of the said Request, be referred to Tuesday next."

And again on Oct. 22d:

"The House, (according to Order) proceeded to take into Consideration, the Request of a Committee of the Council, delivered to a Committee of this House, on the 18th instant; as likewise of the several Papers therein referred to, and after several Debates upon the subject matter thereof, it was,

Ordered, That the said Request and Papers lie on the Table."

The Council, finding the Assembly would take no action in the matter, sent the following message to the House: ¹⁹

"A Message from the Council, by Mr. Livingston, desiring the House to return, (by him) to that Board, the several seditious Journals

¹⁹ Nov. 2, 1734, Minutes of General Assembly.

of Zenger's, No. 7, 47, 48, 49, and two printed Ballads, which were delivered by a Committee of that Board, to a Committee of this House, the seventeenth of October last, together with the Proposals of the Committee of that Board, delivered therewith, to a Committee of this House; and then he withdrew.

Ordered, That the Clerk of this House, produce the said Papers; then Mr. Livingston being called in, Mr. Speaker delivered to him all the said Papers and Proposals, accordingly, and then he withdrew."

The next extract is from the Minutes of the Legislative Council for Nov. 2d, 1734.

"In pursuance of an Order of this Board of the 17th of October last, a Committee of this Board having met a Committee of the House of Representatives . . . but the Board, finding by a Journal of the Votes of that House, that the matters proposed to their Committee were ordered to lye on the table, and conceiving it highly necessary to give a Check to such virulent and seditious Libells, as are dispersed throughout Zenger's Journal to maintain the dignity of his Majesty's Government, and to preserve the peace thereof, they therefore resolved into a Committee to consider of the same. On which his Excellency withdrew.

The Committee having duely weighed and considered the same, and finding that the whole tenour of most (if not all) of those papers now under their consideration, and particularly those Journalls entitled "The New York Weekly Journall, Containing the Freshest advices foreign and domestick," printed by said Zenger and numbered 7, 47, 48, 49, have a direct tendency to raise Sedition and Tumults among the people of this Province, to inflame their minds with a Contempt of his Majesty's rightful Government, and Just prerogative, and disturb the peace thereof, and containing in them likewise not only reflections upon his Excellency the Governor in particular, the Legislature in general, but also upon the most considerable persons in the most distinguished stations in this province. It is therefore unanimously

Resolved, by this Committee that those Journalls of Zenger as above mentioned be burnt by the hands of the common hangman or whipper near the pillory in this city on Wednesday the 6th instant, between the hours of Eleven and twelve in the forenoon, that the Sheriff be ordered to see it effectually done, and that the Mayor and other Magistrates of this city do attend at the burning thereof.

That his Excellency be requested to issue his Proclamation with a reward of £50 for the discovery of the author or authors of said Journalls.

That Zenger the printer thereof be by order of this Board taken into custody by the Sheriff and Committed to prison.

That an Order of this Board be sent to the Magistrates of the respective Countys within this province diligently to exert themselves in the execution of their respective offices in order to preserve the publick peace.

And on the Chief Justice withdrawing it is further

Resolved, that an Order of the Board be sent to the Attorney General to prosecute the printer and Author or Authors thereof when discovered.

His Excellency returning to the Council Chamber the above resolutions were read and reported at the Board by Mr. Clarke, Chairman of the Committee, and

On the Question being put, the same was unanimously agreed to and approved of by this Board."

The Mayor and Magistrates refused either to attend the burning or to allow the hangman to be present, and accordingly the work was done by a negro servant of the Sheriff while a small group from the court party looked on. Zenger was then arrested, and after being released on excessive bail, and the grand jury having refused to find a bill, he was finally brought to trial, on an Information of the Attorney General, for printing and publishing parts of the Journals Nos. 13 and 23, as being false, scandalous, malicious and seditious. The passages specifically objected to were the following; the first, in No. 13;—"Your appearance in print, at last, gives a pleasure to many, though most wish you had come fairly into the open field, and not appeared behind retrenchments made of the supposed laws against libelling, and of what other men have said and done before. These retrenchments, gentlemen, may soon be shown to you, and all men, to be weak, and to have neither law nor reason for their foundation, so cannot long stand you in stead; Therefore you had much better as yet leave them, and come to what the people of this city and province think are the points in question; they think, as matters now stand, that their liberties and properties are pre-

carious, and that slavery is like to be entailed upon them and their posterity, if some past thing be not amended; and this they collect from many past proceedings;” and the second in No. 23;—“ One of our neighbors,” (from New Jersey) “ being in company, observing the strangers ” (from New York), “ full of complaints, endeavored to persuade them to remove into New Jersey; to which it was replied, That would be leaping out of the frying-pan into the fire; for, says he, we both are under the same governor, and your assembly have shewn with a witness what is to be expected from them; one that was then moving to Pennsylvania, to which place it is reported several considerable men are removing, expressed in terms very moving, much concern for the circumstances of New York, seemed to think them very much owing to the influence that some men had in the administration, said he was now going from them, and was not to be hurt by any measures they should take, but could not help having some concern for the welfare of his countrymen, and should be glad to hear that the Assembly would exert themselves as became them, by showing that they have the interest of their country more at heart, than the gratification of any private view of any of their members, or being at all affected by the smiles or frowns of a governor, both which ought equally to be despised, when the interest of their country is at stake. You, says he, complain of the lawyers, but I think the law itself is at an end. We see men’s deeds destroyed, judges arbitrarily displaced, new courts erected without consent of the legislature, by which it seems to me, trials by jury are taken away when a governor pleases, men of known estates denied their votes, contrary to the received practice, the best exposition of any law; Who is then in that province that can call anything his own, or enjoy any liberty, longer than those in the administration will condescend to let them do it, for which reason I have left it, as I believe more will.”

James Alexander and Wm. Smith, the lawyers defending Zenger, were disbarred by Chief Justice De Lancey for questioning the legality of the commission of the court, and it was thought that Zenger must be convicted since there was no one in the province of equal ability to defend him. But Andrew Hamilton, the most famous lawyer of the times in Pennsylvania, was summoned from Philadelphia and took charge of the case. He began by admitting the fact of publication: “ I cannot think it proper for me,” he said, “ (without doing violence to my own principles), to deny the publication of a complaint, which, I think, is the right of every free born citizen to make, when the matters so published can be

supported with truth." But when the Attorney General, at this admission, called at once for a conviction, Hamilton replied, "Not so, neither, Mr. Attorney, you have something more to do; the words must be proved libellous, that is, false, scandalous, and seditious, or else they are not guilty."

The scene that ensued was a remarkable one. On one side were the Chief Justice and the Attorney General, taking the position that the only question before the jury was the fact of publication; and that the maxim "The greater the truth the greater the libel" held, the defendant not being permitted to give the truth of the libel, in evidence:—on the other side was Hamilton, arguing that the Star Chamber practice had died with the Star Chamber, and that the jury had the right to determine both the law and the fact. Speaking of the position in which men were placed when wronged by those in authority, he said,

"It is natural, it is a privilege,—I will go farther, it is a right which all free men claim, and are entitled to, to complain when they are hurt; they have a right publicly to remonstrate against the abuses of power, in the strongest terms, to put their neighbors upon their guard against the craft or open violence of men in authority, and to assert with courage the sense they have of the blessings of liberty, the value they put upon it, and their resolution at all hazards to preserve it, as one of the greatest blessings heaven can bestow I beg leave to insist that the right of complaining or remonstrating is natural; and the restraint upon this natural right is the law only, and that those restraints can only extend to what is false Truth ought to govern the whole affair of libels."

He then went on to show how difficult it was to determine precisely what a libel was, and in exactly what it consisted, illustrating his remarks from different periods of English history to prove how ideas had changed, and after dwelling on the danger of lodging an excess of power in any man, as in giving a judge on the bench the right to determine the law in a libel case, he added,

"Power may justly be compared to a great river; while kept within its due bounds, it is both beautiful and useful; but when it overflows its banks, it is then too impetuous to be stemmed; it bears down all before it, and brings destruction and desolation wherever it goes. If then this is the nature of power, let us at least do our duty, and like wise men,

(who value freedom,) use our utmost care to support liberty, the only bulwark against lawless power, which, in all ages, has sacrificed to its wild lust and boundless ambition, the blood of the best men that ever lived.

“ I hope to be pardoned, Sir, for my zeal upon this occasion: it is an old and wise caution, ‘ That when our neighbor’s house is on fire, we ought to take care of our own.’ For though, blessed be God, I live in a government where liberty is well understood, and freely enjoyed; yet experience has shown us all, (I’m sure it has to me,) that a bad precedent in one government is soon set up for an authority in another; and therefore I cannot but think it mine, and every honest man’s duty, that, (while we pay due obedience to men in authority,) we ought at the same time to be on our guard against power, wherever we apprehend that it may affect ourselves, or our fellow-subjects.

“ I am truly unequal to such an undertaking, on many accounts. And you see I labor under the weight of many years, and am borne down by many infirmities of body; yet old and weak as I am I should think it my duty, if required, to go to the utmost part of the land, where my service could be of any use in assisting to quench the flame of prosecutions upon informations set on foot by the government, to deprive a people of the right of remonstrating, (and complaining too,) of the arbitrary attempts of men in power. Men who injure and oppress the people under their administration, provoke them to cry out and complain, and then make that very complaint the foundation for new oppressions and prosecutions. I wish I could say there were no instances of this kind. But to conclude, the question before the Court and you, gentlemen of the jury, is not of small or private concern; it is not the cause of a poor printer, nor of New York alone, which you are trying. No! it may, in its consequences, affect every freeman that lives under a British government, on the main of America. It is the best cause; it is the cause of liberty; and I make no doubt but your upright conduct, this day, will not only entitle you to the love and esteem of your fellow citizens, but every man who prefers freedom to a life of slavery, will bless and honor you as men who have baffled the attempts of tyranny; and by an impartial and uncorrupt verdict, have laid a noble foundation for securing to ourselves, our posterity, and our neighbors, that to which nature and the laws of our country have given us a right—the liberty—both of exposing and opposing arbitrary power in those parts of the world at least, by speaking and writing truth.” (Rutherford, John Peter Zenger, p. 123.)

The Chief Justice in summing up said that as the facts or words in the Information were confessed, the only thing that could come before the jury was whether the words, as set forth in the Information, made a libel; "and that," he said, "is a matter of law, no doubt, and which you may leave to the Court."

The jury remained out but a short time, and then returned with a verdict of "Not Guilty," a result which was hailed with exuberant joy by the large gathering in the Hall. Before Hamilton's return to Philadelphia, the Freedom of the Corporation was presented to him in these words,

"City of New York, SS.

"Paul Richards, Esqr. the Recorder, Aldermen and Assistants of the City of New York, convened in Common Council, to all to whom these presents shall come, greeting. Whereas honor is the true reward of virtue, and public benefits demand a public acknowledgement; We therefore, under a grateful sense of the remarkable service done to the inhabitants of this City and Colony by Andrew Hamilton, Esqr. of Pennsylvania, barrister at law, by his learned and generous defense of the rights of mankind, and the liberty of the press, in the case of John Peter Zenger, lately tried on an Information exhibited in the Supreme Court of this Colony, do, by these presents, bear to the said Andrew Hamilton, Esqr. with the public thanks of the freemen of this Corporation for that signal service, which he cheerfully undertook under great indisposition of body, and generously performed, refusing any fee or reward; and in testimony of our great esteem for his person, and sense of his merit, do hereby present him with the Freedom of this Corporation. These are therefore to certify and declare, that the said Andrew Hamilton, Esqr. is here by admitted, received and allowed a freeman and citizen of the said City; to have, hold, enjoy and partake of all the benefits, liberties, privileges, freedoms and immunities whatsoever, granted or belonging to a freeman and citizen of the said City.

In testimony whereof, the Common Council of the said City, in Common Council assembled, have caused the seal of the said City to be hereunto affixed, this 29th day of September, A. D. 1735.

By Order of the Common Council. WM. SHARPAS, *Clerk.*"

In September, 1743, Governor George Clinton arrived from Eng-

land. Party strife had not disappeared after the Zenger trial,—in fact it had become intensified, for those who were opposed to the court party felt that their only chance to gain influence and power was through continuing their opposition and gradually establishing themselves as a party striving for the liberty of the people of the colony.

At the same time the court party became involved in internal disputes. By 1746 Governor Clinton had transferred his confidence from De Lancey to Cadwallader Colden, and in Indian matters was displaying great incompetency, refusing to take the advice of the majority of his Council. For this reason, when in the Summer of 1746 he made a trip to Albany to treat with the Iroquois, (who were supposed to be wavering in their allegiance to Great Britain,) the members of the Council, with the exception of Cadwallader Colden and Philip Livingston, refused to accompany him.

In December the trouble in the Council became known to the public and was taken up at the Council Board. In the Minutes of the Council for Dec. 4th, 1746, we find the following: "Mr. Chief Justice De Lancey took notice, That as the business of this Session was now completed he had something to offer to the Council, which arose from the perusal of a pamphlet that had lately fallen into his hands Entitled, 'A Treaty between his Excellency and the Six united Indian Nations depending on the province of New York, held at Albany in the months of August and September, 1746, (which pamphlet he had in his hands,) wherein was a paragraph, page 3, in the words following viz,

'His Excellency the Governor of New York having received his Majesty's Commands to engage the Indian Nations depending on his Government to join in the expedition then intended against Canada, and to make them the usual presents on that occasion; and being sensible of the great use these Nations may be to the success of this Enterprize and likewise of the difficulties that probably might attend his Endeavors at this time, was desirous to have had the assistance of as many of the members of his Majesty's Council as the Circumstances of affairs would admit; but they all declined to give their attendance except Mr. Colden and Mr. Livingston. His Excellency was therefore obliged to Act with the smallest number of members which by his Majesty's Commission can form a Council, viz. Three; The above two Gentlemen and Capt. Ruth-erford, who was then at his post in Albany.'

Which paragraph, he conceived, did contain a Misrepresentation of Facts and an invidious reflection upon such of the members of his Majesty's Council as did not attend his Excellency to Albany."

Chief Justice De Lancey then went on to say that he moved that the Printer might be sent for and examined to find out who had given him the copy. Upon this Mr. Colden admitted having given the copy and after some attempts at equivocation also admitted having ordered its publication, and that he was the author, but in extenuation of his action said he had had no intention of reflecting on any of the members of the Council.

The Council then proceeded to pass a vote of censure on the pamphlet, and, since it had been published, ordered the proceedings of the Council to be printed for the information of the people.

It is interesting in this case to note that the Council makes no threat of proceeding against the printer, although it asserts the right of calling him to the bar, and examining him, but contents itself with publishing a justification of its position, ordering it to be disseminated among the inhabitants of the province by means of the printing-press. It seems like an unwilling admission of the fact that the press had become a power in the land, and at the same time of a desire to use it to win the Council's point in the dispute.

That the public was taking a far greater interest than formerly in the discussions between the several branches of the government, and in the proceedings of the bodies themselves was evidenced from time to time by attempts on the part of the Assembly to restrict the freedom of printing. For example, when the Twenty-fourth Assembly came together on June 25, 1745, it was at once,²⁰

"Ordered, That the Votes and Proceedings of this House, be printed from Time to Time, being first perused and signed by the Speaker; and that no other Person but such as he shall appoint, do presume to print the same."

This order and prohibition we find repeated at the beginning of each session during the colonial period until the Revolution.

The administration of Governor George Clinton is very important on the side of Constitutional growth, since it is now that the General

²⁰ Minutes, General Assembly for that date.

Assembly for the first time clearly enunciates the principles of self-government and the right not only to vote the taxes but to determine the ways in which the money shall be expended. In 1747 the colonies were engaged in war with France, and it was of the greatest importance that the outposts and fortified places on the Canadian border should be adequately garrisoned and amply supplied with provisions and munitions of war. Clinton was striving to assert the principle of royal prerogative in the matter of money-bills, a right which Governor Clarke had allowed to slip away from him. This attempt the General Assembly naturally resisted, and as a result is reproached by the Governor with neglecting to provide him with the money necessary to keep the province properly defended against the French. In the Minutes of the General Assembly of Oct. 8th, 1747, appears the following Message from the Governor,

" Gentlemen,

By your Votes I understand you are going upon Things very foreign to what I recommended you: I will receive nothing from you at this critical Juncture, but what relates to the Message I last sent you, viz. By all Means, immediately to take the preservation of your Frontiers, and the Fidelity of the Indians, into consideration: The Loss of a Day may have fatal Consequences; when that is over, you may have Time enough to go upon any other Matters. G. CLINTON."

The next day the House took into consideration the Governor's Message, and after a rather theatric locking of the door and laying the key on the table (as though, as Clinton says in his Message of Oct. 13th, some one were attempting to break in,) drew up a set of Resolutions to be delivered to the Governor, in which his Message was declared to be an attempt to subvert the rights, privileges, and immunities of the House. In addition a long document, called "A Humble Remonstrance of the House on the present State and Condition of the Colony," was ordered carried by a committee to the Governor. This document, which had taken a Committee several days to draw up, was a long and detailed statement of the Assembly's side of the quarrel and an attempt to show that the wretched state of the colony's affairs was due to the tactics of delay made use of by the Governor and not to any fault of the Assembly which was very willing to grant money provided it had some assurance that the sums voted would be expended for the purposes designated. This Remonstrance the Governor refused to receive, and by his Secretary directed James Parker, the official printer, not to print it in the proceed-

ings of the Assembly; this direction was not heeded by Parker, a step which brought out from the Governor the following Order:

“By His Excellency the Honourable George Clinton, Captain General and Governor in Chief, of the Province of New York, etc.

To Mr. James Parker, Printer to the General Assembly of the Province of New York.

Whereas some Persons, calling themselves a Committee of the General Assembly of this Province, came into an Apartment of my House, on the 9th instant, while I was engaged in my private affairs; and without the least previous Notice, one of them offered to read a large bundle of Paper, which he said was a Remonstrance from that House, and desired my Leave to read the same, which I absolutely refused, or to have it left with me; and whereas the Speaker of the said General Assembly hath, in disregard to my Authority and Person, ordered the same to be printed by you in their Votes, although I forewarned you by my Secretary not to do it; but as you afterwards signified to him, that a Verbal Order was not sufficient to forbid you printing any Thing to that Purpose;

I do hereby in his Majesty's Name, expressly forbid you or any other person in this Province, to re-print or otherwise publish, the said Paper, called, a Remonstrance of the General Assembly of this Province, as you and they shall answer the same at your and their Peril; the said Paper, containing many false, scandalous and malicious Aspersions on me, as Governor of this Province; and I do hereby, further require you to give publick Notice of this my Order, by publishing the same in your next News-Paper; and for your so doing, this shall be the warrant.

Given under my Hand, at the City of New York, October 24th, 1747.²¹

G. CLINTON.”

This Order having duly appeared in Parker's New York Gazette and Post Boy, the Speaker on Oct. 26th reported it to the House and requested “that the House would vindicate his Conduct therein.” Accordingly Parker was ordered to appear before the body. He came the next day and produced Clinton's order in justification of his action, and the Assembly then passed the following resolutions;²²

²¹ Minutes, General Assembly, Oct. 27, 1747.

²² Minutes, General Assembly, Oct. 27, 1747.

Resolved, Nemine Contradicente, That it is the undoubted Right of the People of this Colony, to know the Proceedings of their Representatives in General Assembly, and that any Attempt to prevent their Proceedings being printed and published, is a Violation of the Rights and Liberties of the People of this Colony.

“Resolved, Nemine Contradicente, That any Attempt to prohibit the printing or re-printing of any of the Proceedings of this House, is an infringement of the Privileges of this House, and of the People they represent.

“Resolved, Nemine Contradicente, That the Humble Remonstrance of this House, of the 9th instant, though his Excellency, (contrary to the uninterrupted Usage in such Cases,) refused to receive it, was, notwithstanding, a regular Proceeding of this House.

“Resolved, Nemine Contradicente, That his Excellency’s Order to forbid the printing or re-printing the said Remonstrance, is unwarrantable, arbitrary and illegal, and not only an open and manifest Violation of the Privileges of this House, but also of the Liberty of the Press, and evidently tends to the utter subversion of all the Rights and Liberties of this House, and of the People they represent.

“Resolved, Nemine Contradicente, That Mr. Speaker’s ordering the said Remonstrance to be printed with the Votes and Proceedings of this House, is regular, and entirely consistent with the Duty of his Office as Speaker of this House.”

On Nov. 12th a further step was taken, when Col. Lewis Morris made the following Motion, which was carried;

“The late Order in Parker’s Paper, ordering him as Printer of this House, not to publish or print the Proceedings of this House, is an Attempt to deprive the People of these Colonies of their Liberties; I therefore move, that we order him to reprint our Humble Remonstrance to his Excellency, and that he deliver ten Copies to each member of this House, that our Constituents may know, that it is our firm Resolution to preserve the Liberty of the Press, and to communicate our proceedings to them, that they may judge of our Conduct.”

The Governor up to this time had said nothing on the subject, but in his Speech dissolving the Assembly on Nov. 25,²³ he breaks his silence

²³ Minutes of General Assembly of that date.

and argues the matter at length. He begins by saying that their action has a very dangerous likeness to a desire to grasp the executive power, a result which would be destructive of their dependency on Great Britain, and of which the people of Great Britain might become jealous. He then goes on to show that their conduct is not only wanting in respect to their Sovereign, since the Governor is his representative, but even wanting in ordinary manliness and honesty, since they are striking at one who, (on account of his position,) cannot retaliate. The question as to whether the paper is not a false, scandalous and malicious libel he left to his superiors in England. He ends his statement of the matter, "As to the popular Out-cry you endeavor to raise, of the Liberty of the Press, I shall only say, that certainly this Liberty, as well as any other may be abused, to the injury of others; if an injury is done, a proper Remedy ought to be applied; and such a Remedy can never be thought a Restraint of any just Liberty. I am persuaded that no considerate man can think, that I offered any Obstruction to the Liberty of the Press, by forbidding the Printer to publish that one Paper at his Peril; if no Peril in doing it, neither the author nor Publishers of it can suffer by the Order; the proper Judges may in Time show, whether I did a Service or a Disservice to any, by such Warning."

The Twenty-fifth Assembly came together in the Spring of 1748 and the old quarrel was resumed. On reassembling for the second Session in September an Address was drawn up in which former complaints were reiterated, and which the Governor refused to receive.²⁴ The Address was then printed in the Votes and Proceedings of the Assembly, and on Nov. 12th the Governor, in proroguing the Assembly, took occasion to complain of their method of procedure.

"In whatever your Governor and you differ, there is a legal Method for Redress. In my Message to you, I told you that I would do the Justice, to send a Copy of that Paper, which you call an Address, to his Majesty's Ministers; which is sending it to the proper Tribunal for Redress, if I have done you any injury, by my refusing to receive it; but you seem to decline this legal Method; and by your publishing that Paper, under the name of an Address, in your Votes, and afterwards in a publick News Paper, published by the Printer of your Votes; you seem to place the dernier Resort in all Disputes between you and your Governor, in the Populace; how his Majesty may take this, or how a Parlia-

²⁴ Minutes, General Assembly, Oct. 19 and Oct. 21.

ment of Great Britain, may take your claiming, not only the Privileges of Parliament, but Privileges far beyond what any House of Commons ever claimed, deserves your most serious consideration.”²⁵

Governor George Clinton was succeeded by Sir Danvers Osborne in the summer of 1753, but the latter meeting with a violent death the government devolved on James Delancey, the Lieutenant-Governor. The latter in his speech at the coming together of the Assembly took occasion to quote certain paragraphs from the Instructions given to Sir Danvers Osborne. These would naturally be of interest to all in the colony, and Hugh Gaine, the printer of the New York Mercury, published the paragraphs in his next issue. This provoked comment and the Assembly at once took action.²⁶

“The House being informed that one Hugh Gaine, a printer, in the City of New York, had presumed in his Paper, called, the New York Mercury, of Monday, November the 12th, 1753, No. 66, to print and publish Part of the Proceedings of this House, particularly several articles of his Majesty’s Instructions to his Excellency, the late Sir Danvers Osborne, Baronet; and the said Paper being produced, and read,

“Ordered, That the said Hugh Gaine, attend this House To-morrow, at 10 o’clock in the morning.

“Ordered, That the Serjeant at Arms, attending this House, serve the said Hugh Gaine, with a Copy of this Order forthwith.”

Next day Hugh Gaine appeared at the Bar of the House; “being asked, whether he was the Printer of the Paper, called the New York Mercury, he acknowledged that he was; and then being asked, by what Authority he had therein printed and published an Extract of the Votes of this House; answered, that he had no Authority for doing it, and knew not that he did amiss in doing so; and that he was very sorry that he had offended the House, and humbly asked their Pardon.”²⁷

The result was that after the matter had been discussed in the House the printer was called in, reprimanded, and allowed to go, on paying the costs.

In 1756 James Parker, who had in 1747 braved the wrath of Gov-

²⁵ Minutes, General Assembly of that date.

²⁶ Minutes, General Assembly, Nov. 13, 1753.

²⁷ Minutes, General Assembly, Nov. 14, 1753.

ernor Clinton in order to obey the Speaker of the House, himself fell into disgrace. Parker and Wm. Weyman were at this time joint owners of the New York Gazette, or the Weekly Post Boy, and on the 15th of March, published an article entitled "Observations on the Circumstances and Conduct of the People in the Counties of Ulster and Orange, in the Province of New York."

The Assembly at its meeting on the 16th took the matter up on the ground that it reflected on the conduct and composition of the House. The Serjeant at Arms was directed to bring the printers to the Bar. Parker was out of town, but Weyman appeared, and being asked how he had come to print it said that he done so merely as a piece of news, and went on to say that he believed it to have been written by the Rev. Hezekiah Watkins, a clergyman of Newburgh, Ulster County, and that he was heartily sorry for the mistake. The House then; ²⁸

"Resolved, That the Piece contains sundry insolent, false, and malicious Expressions, calculated to misrepresent the conduct of the Representatives of the People of this Colony.

"Resolved, That the Author of the said Piece has attempted by false and malicious Misrepresentations, to irritate the People of this Colony against their Representatives in General Assembly, and is therefore guilty of a high Misdemeanor and a Contempt of the Authority of this House.

"Resolved, That James Parker and Wm. Weyman, for having published the said Piece in their Weekly Paper, are guilty of a high Misdemeanor and a Contempt of the Authority of this House.

"Resolved, That James Parker and Wm. Weyman, be for their said offense, taken into the Custody of the Sergeant at Arms attending this House."

Four days later Parker presented a petition setting forth that on receiving news of what had happened he had at once returned and surrendered himself; that the writer of the piece was Mr. Watkins, as he could easily prove; and the petition goes on to say "that when he received the said Piece, he thought it contained sundry indecent Expressions, and thereupon struck them out, but is sorry that he left sundry Matters, which though they seemed not to be malignant to him at the Time, appear now to be so; that he humbly confesses his fault in printing the said Piece;

²⁸ Minutes, General Assembly, March 19, 1756.

that he had no design to give Offense thereby, promised to be more circumspect for the future, and humbly begs the pardon of the honourable House: And therefore humbly praying (having long experienced the Kindness of the Honourable House) a Dismission from the Custody in which he now is."

A week later the House took the matter up, and a motion to that effect having been made by Capt. Richard, Parker and Weyman were discharged from custody.

The House having been prorogued shortly after this, it was not until it came together again that the matter of the Revd. Mr. Watkins received attention. On Oct. 15, 1756, a motion was made by Capt. Walton that Mr. Watkins be ordered to attend the House. Accordingly he appeared on the 22nd and admitted the fact of authorship said that he had had no intention of acting disrespectfully but that the condition of affairs in Ulster and Orange Counties had caused his zeal for the welfare of the people to carry him too far; and that he was heartily sorry. In spite of his explanation he was ordered into the custody of the Sergeant at Arms, and the Minutes of the next day (Oct. 23,) set forth his Petition in which he went over at greater length the explanation he had given orally the day before. After some discussion of the matter he was ordered to be brought to the Bar of the House where he was reprimanded by the Speaker and then discharged.

Another case very similar to the last was that of Samuel Townsend, a Justice of the Peace of Queen's County. Some of the so-called "Neutral French" had been quartered upon Long Island, and Samuel Townsend wrote, in reference to their uncared for condition and misfortunes, a letter to the Speaker which the latter laid before the Assembly on Mar. 16, 1758, and Townsend was ordered to appear and explain the matter. Having examined him the House²⁹

"Resolved, That the letter contains sundry indecent and insolent Expressions, reflecting on the Honour, Justice and Authority of this House.

"Resolved, Nemine Contradicente, That the said Samuel Townsend, for writing and sending the said Letter, is guilty of a high Misdemeanor and a most daring Insult, on the Honour, Justice, and Authority of this House.

²⁹ Minutes, General Assembly, Mar. 23, 1758.

“Ordered, That the said Samuel Townsend remain in the Custody of the Sergeant at Arms attending this House.”

Next day a long petition was presented in which Townsend begged “leave, humbly to express his Uneasiness and Sorrow, for having wrote the said Letter; and at the same time, to declare that he did not intend thereby to cast any Reflection upon the Conduct or Dignity of this House, and that he shall for the future be more cautious to avoid every occasion of exposing himself to their Censure or Reproof.

“Your Petitioner therefore most humbly Prays, that the sincere Acknowledgement of his Sorrow and Uneasiness may prevail upon this honourable House, to treat him with all that Levity and Compassion, to which the Innocence of his Intention herein declared, and the real Regard he has for the Honour of this House, may entitle him, and discharge him from the Custody of the Sergeant at Arms.”

After this had been read Townsend was ordered to the Bar, and, having been reprimanded by the Speaker, was discharged.

The growing dissatisfaction with the home government was fanned into open opposition when the news arrived in the colonies that the Ministry, not content with the restrictions which it had placed upon the growing trade of the Atlantic coast towns, had decided to introduce direct taxation by a duty on stamped paper. The popular press in New York was filled with articles against the Stamp Act, but these articles were far exceeded in number and influence by handbills which were posted throughout the town, and read and discussed by all the inhabitants. The Assembly passed all this over, in silence, tacitly permitting what but a short time before would have brought any one suspected of complicity in the writing or printing of the same to its Bar.

But a peculiarly offensive piece of writing finally was taken notice of. It was about a month after the riot of Nov. 1st, 1765, (when the Stamp Act was due to go into effect,) on which occasion some damage had been done to the fort and batteries, that,³⁰ “Mr. Lott, Clerk to this House, presented on the 26th instant, a sealed Letter to the House, directed in the words following, viz. ‘To the General Assembly of the Province of New York.’ Which Letter was delivered to him, the said Lott, by his Clerk who had received it from a Person unknown; and was enclosed in another Letter directed, ‘To Mr. Lott, Mercht. in New

³⁰ Minutes, General Assembly, Nov. 29th, 1765.

York,' and the same being read, was in the words following: 'on Receiving you are to read the in Closed in the open assembly of this Province New York as you are Clark and whare of fail not on your perrel.

(Signed) FREEDOM.'

And then the Letter addressed to the General Assembly being opened and also read, was in the Words following: 'Gentlemen of the House of Representatives you are to consider what is to be Done first Drawing of as much money from the Lieut. Governors Sallery as will Repare the fort and on Spike the Guns on the Battery and the next a Repeal of the Gunning Act and then thare will be a good Militia but not before and also as you are asetting you may Consider of the Building Act as it is to take place nex yeare wich it Cannot for thare is no Supply of Some Sort of meterials Require'd this Law is not Ground on Reasons but thare is a Grate many Reasons to the Contrary do Gentlemen we desire you will Do what Lays in your power for the Good of the public but if you take this ill be not so Conceited as to Say or think that other People know noting about Government you have made these Laws and say they are Right but they are Rong and take a way Liberty, Oppressons of your make Gentlemen make us Sons of Liberty think you are not for the Public Liberty, this is the General Opinion for this part of Your Conduct.

by order

Signd. one and all

Freedom'

1765 Nov. 26.

"The House then proceeded to the Consideration of the said Letters, and having fully weighed and Examined the same;

"Resolved, Nemine Contradicente,

"That, said Letters are Libellous, Scandalous and Seditious, containing many indecent and insolent Expressions, highly reflecting on the Honour, Justice and Authority of, and an High Insult and Indignity to this House; and are designed and calculated to inflame the Minds of the good People of this Colony, against their Representatives in General Assembly.

"Resolved, Nemine Contradicente,

"That the Author or Authors of the said Letters is, or are, guilty of an High Misdemeanor and a most daring Insult on the Honour, Justice, and Authority of this House."

They then resolved to present an Address to the Governor calling on him to offer a reward of £50 for the discovery of the Author or Authors, and say that the House will provide means to meet the expense.

Writing under date of Sept. 23, 1765 to Secretary Conway in England, Lieutenant Governor Colden remarks on this general subject:³¹

“Soon after it was known that Stamp Duties were by Act of Parliament to be paid in the Colonies, virulent papers were published in the Weekly Newspapers, filled with every falsehood that malice could invent to serve their purpose of exciting the people to disobedience of the Laws and to Seditious. At first they only denied the authority of Parliament to lay internal taxes in the Colonies but at last they have denied the Legislative Authority of the Parliament in the Colonies, and these papers continue to be published.

I agreed with the Gentlemen of the Council that considering the present temper of the people this is not a proper time to prosecute the printers and Publishers of the Seditious Papers. The Attorney General likewise told me that he does not think himself safe to commence any such Prosecution.”

And in another letter to Secretary Conway under date of Oct. 12, 1765,³² he again refers to the matter.

“Since the last which I had the honour to write to you of the 23d of September, this town has remained quiet the inflammatory Papers continue to be published, exciting the People to oppose the execution of the Act of Parliament for laying a Stamp Duty in the Colonies. The most remarkable of these Papers is enclosed. This was distributed along the Post Roads by the Post Riders. I examined the Post Master in this place to know how this came to be done. He assured me that it was without his knowledge; that he had examined the Post Riders and found that one or more Bundles of them were delivered at Woodbridge, New Jersey, to the Post Rider, by James Parker Secretary to the General Post Office in N. America. Parker was formerly a printer in this place and has now a printing Press and continues to print occasionally. It is believed that this Paper was printed by him. The Gentlemen of the Council think it prudent at this time to delay making more particular inquiry lest it should be the occasion of raising the Mob which it is thought proper by all means to avoid.”

³¹ Doc. Rel. Col. Hist. N. Y., VII, 759.

³² Doc. Rel. Col. Hist. N. Y., VII, 767.

In the fall of 1767 a pamphlet, of which a few copies were reprinted from a London Edition, appeared in New York and created considerable excitement. It was entitled "The Conduct of Cadwallader Colden, Esq. Lieutenant-Governor of New York, relating to the judges' commissions:—Appeals to the King; and Stamp Duty." It had been presented by the grand jury in October as a libellous reflection on the Council, the Assembly and the Courts of Justice in the province of New York, and, as its sub-title would indicate, was a defense of Colden's conduct when acting as Governor. In the course of the argument reference was made to the action of the two branches of the Assembly in these matters, and both bodies took umbrage and appointed a joint committee to investigate, and if possible discover, the author and the person responsible for the republication in New York.³³

The committee carried on its work with vigor, summoning among others the printers of the province and also Colden's son and son-in-law,³⁴ and the matter finally ended in a report by the committee to the General Assembly and the adoption of the following resolutions.³⁵

"Resolved, . . . That the said pamphlet highly reflects upon the honor, justice and dignity of his Majesty's Council, the General Assembly, and the Judges of the Supreme Court; and contains the most malignant aspersions, upon the inhabitants of this colony in general.

"Resolved, That the said pamphlet tends to destroy the confidence of the people, in two of the branches of the legislature, and the officers concerned in the due administration of justice; to render the government odious and contemptible, to abate that due respect to authority, so necessary to peace and good order, to excite disadvantageous suspicions and jealousies in the minds of the people of Great Britain, against his Majesty's subjects in this colony, and to expose the colony in general, to the resentments of the crown and both houses of Parliament.

"Resolved, That as the House has not been able to discover the author of the said pamphlet, a dissolution of the general assembly is speedily expected; his Excellency the Governor be humbly requested, in case the author should hereafter be discovered, to order a prosecution to be issued against him, that such punishment may be inflicted on so great an offender as the law directs."

³³ Min. of Legislative Council, and of General Assembly, Dec. 23 and 30, 1767.

³⁴ Letter of Colden to Earl of Shelburne, Jan. 21, 1768. Doc. Rel. Col. Hist. N. Y., VIII, p. 6.

³⁵ Minutes, General Assembly, Feb. 6, 1768.

This is an instance where neither branch of the Assembly can force an avowal of authorship from those who are suspected; a little later we shall find in the Parker-McDougall case that the Governor and Council did not consider it beneath their dignity to resort to very questionable actions when they were trying to find the person responsible for a pamphlet which displeased them.

It is not necessary to enter here on the details of the circumstances which finally led to the repeal of the Stamp Act and the passage of the Mutiny Act.³⁶ The more extreme party had viewed with great inquietude the passage of the latter act, and the way in which the Assembly had yielded in the matter of meeting its provisions. When the Governor, Sir Henry Moore, died on Sept. 11th, 1769 and Lieutenant Governor Colden once more took up the reins of government, the feeling was intensified, and on Dec. 16th, two printed papers appeared, the first signed "A Son of Liberty," and the second "Legion" in which "the betrayed inhabitants of the City and Colony of New York" were invited to meet on the following Monday at the House of De La Montayne in the Fields near the City, and there take steps to set forth their rights and vindicate the privileges which the Assembly seemed unable to successfully assert.

At this meeting which was largely attended a speech was made by John Lamb a prosperous merchant of the city.

Meanwhile the Assembly had had its attention called to the papers and had declared the first to be "false, seditious and infamous," and had branded the second as "an infamous libel," and had requested the Lieutenant-Governor to issue his proclamation, offering a reward of £100 for the discovery of the author.³⁷ After the meeting in the Fields the Assembly ordered Lamb to appear before it, and examined him as to "his conduct about the two libels" but as it did not appear that his actions at the Fields had been in consequence of the two libels he was allowed to depart.³⁸ But the Assembly had not given up all hope of finding and prosecuting the author of the two pamphlets. One of Parker's journeymen for the sake of the reward, gave information against him, and on Feb. 7th Parker was arrested and examined by the Governor and Council. While the latter was detained in a room off the Council

³⁶ Vide Isaac Q. Leake, "Memoir of the Life and Times of General John Lamb, Chapters II and III.

³⁷ Minutes, General Assembly, Dec. 18th and 19th, 1769.

³⁸ Minutes, General Assembly, Dec. 31, 1769.

Chamber, his apprentices were arrested, and brought before the Council, and although for a long time they stoutly refused to admit any knowledge of the papers, one of them by gross intimidation was finally brought to admit that the papers had been printed in his master's office.

Parker was then brought back before the Council, told that his apprentice had admitted that it had been printed by him, and threatened, in case he refused to name the author, with the loss of his position as Secretary of the Post Office. Finally Parker, being promised indemnity, gave information which resulted in the arrest on a bench warrant of Alexander McDougall, who was taken before the Chief Justice, and on refusal to admit the fact of authorship, committed to prison.

Some seven years before this, in 1763, John Wilkes, member of Parliament, and editor of the "North Britain" had been arrested on a general warrant for having attacked in No. 45 of his journal the Bute administration and abused the King, charging the latter with falsehood. Wilkes was discharged on the ground of parliamentary privilege, and the question being carried before the Chief Justice, Lord Camden, the latter declared general warrants to be illegal. Wilkes was expelled by a subservient Parliament, but was regarded by great numbers in the nation as a martyr to the cause of liberty and freedom of discussion.

Now it happened that the vote of the Assembly declaring the hand bills libellous had been printed on the forty-fifth page of the journal. For either this reason, or more probably because of No. 45 of the "North Britain" (which number was often used as a party-cry in England), "Forty-five" became the watchword of the Sons of Liberty, at this time a numerous body. McDougall was overrun with visitors at the jail and was forced to issue in the "New York Weekly Journal" for Feb. 15th, a card to his friends in which he appointed the hours from three to six in the afternoon to receive them.

In the same number of the Journal appears an account of one of these receptions:

"Yesterday, the forty-fifth day of the year, forty-five gentlemen, real enemies to internal taxation, by, or in obedience to external authority, and cordial friends to Capt. McDougal, and the glorious cause of American liberty, went in decent procession to the New Gaol; and dined with him on forty-five pounds of beef, cut from a bullock of forty-five months old, and with a number of other friends who joined them in the

afternoon, drank a variety of toasts, expressive not only of the most undissembled loyalty, but of the warmest attachment to Liberty, its renowned advocates in Great Britain and America, and the freedom of the press. Before the evening the whole company, who conducted themselves with great decency, separated in the most cordial manner, but not without the firmest resolution to continue united in the glorious cause." In April he was indicted by the Grand Jury for libel, and being brought to the bar pleaded not guilty and was admitted to bail.

While matters were in this condition the Assembly again took the matter up. On Dec. 13, 1770, the Speaker was directed to order McDougall to attend at the Bar of the House to answer a complaint made against him by Mr. De Noyellis for being the supposed author or publisher of the paper signed "A Son of Liberty."³⁹ On his attending, McDougall was asked whether he was or was not the author of the paper. He replied "That as the grand jury and house of Assembly had declared the paper in question to be a libel, he could not answer the question. Secondly, that as he was under prosecution in the Supreme Court, he conceived it would be an infraction of the laws of Justice to punish a British subject twice for one offense, for that no line could be run, that he might be punished without end; but he would not be understood to deny the authority of the house to punish for a breach of privilege, when no cognizance is taken of it in another Court."

The Assembly decided that this was a contempt of the authority of the house, and, since he refused to ask pardon of the house, he was ordered into the custody of the Sergeant-at-Arms, and placed in the county jail.

A writ of Habeas Corpus was sued out before the Court of Justice, whereupon the sheriff notified the house and asked what he should do. A committee was appointed on Jan. 22d, 1771, "to search the journals of the house of Commons, for precedents in cases where writs of habeas corpus have been issued, to bring persons committed by the Commons before other Courts." The committee reported on Feb. 16, that several precedents had been found, which precedents were ordered printed in the Journal of the House. It was also determined that the sheriff should be indemnified for his action in not obeying the order of the Court.

The Assembly was prorogued on March 4, 1771, and did not come

³⁹ Minutes, General Assembly of that date.

together till Jan. 7, 1772, and we hear no more of the McDougall affair. About this time Parker died and as he was the principal witness in the case it was probably considered useless to bring up the indictment before the Court.

From this time on, pamphlets, opposing the Crown and its policy of repression, continued to appear in ever increasing number, but the government made no serious sign of opposition, and seemed to have given up in despair the attempt to control a press which the majority of the people warmly supported.

CHAPTER V

THE PRESS IN THE SOUTHERN COLONIES

IN the Southern colonies we find, as we should expect, an absence of any very important cases bearing on the subject under investigation. The ideas of Sir Wm. Berkeley, (for thirty-eight years Governor of Virginia), in regard to the dissemination of information, may be gathered from a reply made by him to some enquiries of the Lords Commissioners of Foreign Plantations.

The question being "What course is taken about the instructing the people, within your government in the Christian religion; and what provision is there made for the paying of your minister?" his answer is: "The same course that is taken in England out of towns: every man according to his ability instructing his children. We have forty-eight parishes, and our ministers are well paid, and by my consent should be better if they would pray oftener and preach less. But of all other commodities, so of this, the worst is sent us, and we had few that we could boast of, since the persecution in Cromwell's tyranny drove divers worthy men hither. But, I thank God, we have not free schools nor printing; and I hope we shall not have these hundred years. For learning has brought disobedience and heresy and sects into the world; and printing has divulged them and libels against the government. God keep us from both."¹

At the beginning of the last quarter of the seventeenth century Virginia suffered from internal disorders (as Bacon's Rebellion), due to political disturbances having their origin in the English Civil War. Lord Culpepper, the Governor, was inclined to stretch the royal prerogative to its furthest limit and met the murmurings of the Assembly with a cold and gloomy dignity.²

The Assembly insisting on its rights as given in the charters, Lord Culpepper dissolved the body and endeavored to stamp out all remem-

¹ Original in a book in the Office of the General Court, labelled "Inquisitions &c., 1665-1676" p. 239, printed in Hening's Statutes at Large, II, 517.

² Burke, Hist. Virginia, II, 237.

brance of past freedom. In the Bland MS. p. 498,³ we find the following entry: "Feb. 21, 1682, John Buckner called before the Lord Culpepper and his Council for printing the laws of 1680, without his Excellency's license, and he and the printer ordered to enter into bond in £100 not to print anything thereafter, until his majesty's pleasure should be known." Thus, the press was strangled at its birth, since we have no record or copy of any other work, and that the government continued to watch carefully lest it should appear again is proven by the Instructions of Lord Effingham, the next Governor, in which he is ordered "to allow no person to use a printing press on any occasion whatsoever."⁴

In the period between 1733, when Wm. Parks established his press at Williamsburg, and 1765 when Wm. Rind began to issue a paper at Williamsburg, there was but the single press in Virginia, and being the organ of the government it may be easily imagined that it had no great temptation to struggle for the liberty of the press.

With the exception of libel suits against Wm. Parks about the year 1740 (by which the House of Burgesses sought to punish him for publishing an article reflecting on one of the members), and the presentment in 1766 of Rind, and of Purdie and Dixon, the publishers of the two Virginia Gazettes (for referring in a way considered improper, to the bailment of Colonel Chiswell), in both of which instances the prosecution failed utterly in its attempt,—there is nothing on the subject which claims our attention.

In South Carolina the press was encouraged, liberal inducements being held out to any printer who would settle in the colony. As a result of this policy we find the printing press in operation from the year 1730, a newspaper being published in 1731. In the early period of the history of the press in the colony the only cause of serious trouble that we find was one involving Peter Timothy, of the Gazette, who had published a letter by one Hugh Bryan in which occurred the statement that "the clergy of South Carolina broke their Canons daily." With Timothy were also arrested Bryan and George Whitefield, the Evangelist, who had corrected the manuscript. All three were admitted to bail, and the matter was dropped.

In 1773 one of the most important cases that ever occurred in the

³ Quoted by Hening, *Statutes at Large*, II, 518.

⁴ Chalmer's *Annals*, Vol. I, p. 345.

colonies came about through the publication in the South Carolina Gazette, then owned by Timothy and a partner whom he had lately taken, named Thomas Powell, but managed entirely by the latter, of a portion of the proceedings of the Council on the previous day. Being summoned to attend the body, he admitted that he was the publisher of the Gazette, and that he had printed the proceedings, which on being asked he said had been brought to him by the Hon. Wm. Henry Drayton, a member of the Council. The Council then adjudged him "guilty of a high breach of the privileges, and a contempt of the house."

Powell refused to ask pardon of the Council which then,

"Resolved, That Thomas Powell, who hath this day been adjudged by this house, to have been guilty of a high breach of privilege, and a contempt of this house, be for his said offense committed to the Common Gaol of Charleston; and that his Honor, the President of this house, do issue his warrant accordingly."

Mr. Drayton, who was present, and had acknowledged his share in the affair, protested strongly, but without avail, and Powell was placed in prison. Two days later, on Sept. 2d, the Hon. Rawlins Lowndes, and Mr. George Gabriel Powell, the former being Speaker of the Assembly, and the latter one of the members of the body, and both being justices of the peace, had Powell brought before them on a writ of Habeas Corpus and discharged him. The Council then took action in these resolutions:

"Resolved, That the power of commitment is so necessarily incident to each house of Assembly, that without it neither their authority nor dignity can in any degree whatsoever be maintained or supported.

"Resolved, That Rawlins Lowndes, Esqr., Speaker of the Commons House of Assembly, and George Gabriel Powell, Esqr. member of the said house, being two justices of the peace, *unus quorum*, lately assistant judges and justices of his majesty's court of Common Pleas, have, by virtue of habeas corpus by them issued, caused the body of T. Powell to be brought before them, on the second of this instant September, and the said justices, disregarding the commitment of this house, did presumptuously discharge T. Powell out of the custody of the sheriff under the commitment of this house.

"Resolved, That the said justices have been guilty of the most atrocious contempt of this house."

The resolution which follows calls upon the Assembly to disavow the action of these men and give them up to receive proper punishment. This the Assembly refused to do, and then both houses carried the matter on petition to the Crown, and it had not been settled when the breaking out of the Revolutionary War put an end to the affair.

In this case the attempt of the upper house to destroy the liberty of the press, was opposed by the desire of the lower house to uphold it, and the fact that this occurred on the eve of the Revolution is significant, teaching us that even to the last the principle that the press must be free had not been established in the American colonies.

CHAPTER VI

CONCLUSION

WE have had brought before us all the instances of any importance, throughout the American colonies of efforts on the part of the government to control the liberty of the press. Let us now attempt to deduce from them the general principles which governed the matter.

In the first place it is clear that, as the several colonies differed the one from another in their relations with and dependence upon the home government and their Governor, who represented that government, so too the press was in some colonies far more free from control than in others. In Massachusetts, where interference from outside was always resisted, control by the Governor was seldom attempted. Before the administration of Governor Andros the Crown made no attempt to interfere; Andros himself appointed Edward Randolph (vide p. 9) as licenser, and Bartholomew Green, the Boston publisher testifies (vide p. 10) to the fact that in his time (the end of the seventeenth century), Lieutenant-Governor Stoughton took a keen interest in the productions of the press, and refused to allow any publications without a previous application to him, with a copy of the matter to be published. After this period the control by the Crown again was lost in that as also in political matters.

In Pennsylvania we have an instance of a Governor representing an individual proprietor. Here the struggle between the people and Penn's representative in political matters was carried over into the field occupied by the press, and so we find in the early period of the existence of the press a dual authority exercised, the Crown and the Quarterly Meeting, both claiming the right of censorship (vide p. 23). In the first half of the eighteenth century the power of the Quakers passed away as far as our subject is concerned, but the control exercised by the Crown continued, although more and more questioned, until the breaking out of the Revolutionary struggle.

In New York the Governor himself was responsible for the intro-

duction of the press and for forty years (1692-1734), it took no active part in political agitations, maintaining a cautious neutrality under Bradford. In this colony it was rather a question of the right to freedom of speech, a question raised in the prosecution of Col. Nicholas Bayard. From the period of the Zenger trial newspapers continued to increase and the twenty-five years before 1775 witnessed a continuous production of pamphlets in which the Crown and its representative were attacked, the efforts to punish by the government being in almost every case entirely futile. The press divides itself into two groups, the supporters and opponents of the Governor, and the party newspaper becomes a reality.

In the Southern colonies the press never attained any liberty, the government being ever on the watch to repress the smallest attempt at freedom of discussion and criticism.

In the second place we find that the attitude assumed by the inhabitants of the colonies, as expressed by the actions of their representatives, varied in the different colonies. We do find this general similarity, that in all there was a very jealous upholding of the rights of the legislative body as against criticism. That can be easily established by a perusal of the Minutes of any of the Assemblies. But in Massachusetts a distinction seems to have been early established between a criticism of the proceedings of the General Court as such, and a criticism of the policy of the government. In Pennsylvania this view was only in the latter period arrived at; in New York the General Assembly was constantly taking offense at writings appearing in the newspapers or distributed in the form of pamphlets; while in Virginia the question never arose because there was no criticism.

Everywhere we find that there was, as time goes on, a general advance towards freedom of discussion. But this is best seen in non-political matters. With the failure by Parliament in 1695 to renew the Licensing Act all publication became at least theoretically free except in so far as it was restrained by the law of libel. To just what extent this law could be stretched was always a matter of dispute. The maxim "the greater the truth, the greater the libel" must certainly have exercised an influence to deter the publications of the time from the discussion of private affairs. In fact in many instances the news contained in an issue of a newspaper was practically nothing, the few columns being occupied with a very bald statement of Indian affairs, or the relations with France or perhaps a short account of something which had taken place in Eng-

land or on the Continent. The needs of the community, as better roads or the impounding of wandering cattle, were lightly touched on, but there was but slight evidence of any conception of the idea that the press could lead and direct public opinion as to municipal affairs.

In political matters not directly affecting the Crown there was also a slight advance towards freedom of discussion, which, as the time of the Revolution approached, became very much extended. But here again no general rule can be established for the more radical colonies, as Massachusetts, would naturally be far in advance of the more conservative, while between would stand New York.

Of one thing we may be confident. In no colony would the Governor, as representing the Crown, permit a criticism of its actions to pass without censure, and, if possible, punishment. When the *Evening Post* of Boston (vide p. 14) published in 1741 the paragraph in regard to the expected overthrow of the Walpole Ministry, the Attorney-General was at once ordered to file an Information against the printer, Thomas Fleet, and although no further proceedings were ever taken, the omission was due rather to want of confidence in the Massachusetts jury than to any leniency on the part of the Governor. In the case of McDougall (vide p. 65), we find the writer of a pamphlet obnoxious to the Crown kept in prison even against a writ of Habeas Corpus, and only released when the death of the principal witness in the case made his conviction impossible.

x The liberty of the press was still further curtailed by the influence exerted by certain classes in the community. There was always a strong feeling among those who had grants of land (either directly from the Crown or by the Crown as confirmatory of purchases already made from the Indians), against any discussion of their rights over those who were their tenants. This influence would of course be of importance only in the colonies where grants were numerous, as in the colony of New York. But another class influence, that of the Clergy, was far stronger at all times and universal in its extent. In Massachusetts and Pennsylvania it is hardly possible to overestimate the importance of this influence, and in none of the colonies can it be neglected if we desire to properly appreciate the difficulties that faced the printer in his struggle for the right of free discussion. The troubles of Wm. Bradford, the elder in Pennsylvania (vide p. 26), and of James Franklin in Massachusetts (vide p. 11), give us a pretty clear idea of the troubles that would beset the man who did not keep himself out of controversy. Just as the New England Election

Sermons give us perhaps the best means of understanding the influence of the Clergy in the field of politics, so these quarrels between printer and Quarterly Meeting or Presbytery show us the feeling toward freedom of discussion.

It is also important to remember that the press appealed to a very much smaller percentage of the population in colonial times than it does to-day. "In Boston with a population of 8000, Campbell succeeded in selling but 300 copies of his News Letter when it was the only newspaper printed in America."¹ Later the circulation of all the papers increased, but it was still but a small proportion of the colonists who received first hand the opinions of the editor. And this body of subscribers was for the most part of the professional class or the wealthier part of those in trade, persons naturally of a conservative temper and apt to look with disfavor on any strong attack on or disregard of legalized and established authority.

In New York, owing to the peculiar way in which the press was introduced, it for the first forty years of its existence did nothing to put itself in antagonism to the government; in Massachusetts it at first was given a subvention by the General Court; in South Carolina a comparatively large sum was offered to any printer who would brave the dangers of the climate and establish a press. With these exceptions its early days were passed under governments which viewed with dislike or suspicion any attempts on the part of the printers to take an intelligent part in the questions that were interesting the people. For this reason the press in all the colonies early assumed a position of antagonism to the constituted authority and in return the government took every opportunity to hurt it by means of prosecutions in the courts or inquisitorial proceedings before the Governor and his Council. It is interesting to note however that these proceedings lost almost all their terrors as the period of the Revolution approached, for the press received more and more the support of the people, who had learned to appreciate the wide circulation which the newspaper gave to the new doctrines; thus we constantly find the grand juries refusing to find true bills against the printers, in this way reducing the Governor to the use of Informations which were looked on with suspicion by the people and seldom resulted in a verdict of Guilty.

But the greatest influence of the press was exerted through the flood of hand-bills and pamphlets which ever increased in volume as the period

¹ Hudson, History of Journalism, p. 57.

of the Revolution drew near. Printed in large numbers and circulating everywhere, we find Governors reporting to the home government that it was impossible to stop them, and that they were doing incalculable harm.

If now we attempt in a very brief way to review the whole matter of the struggle for the liberty of the press we shall find:

First: That the system in vogue in America, as in England, up to the close of the seventeenth century, was a system of administrative control by the Crown through appointed officers called Censors, to whom all writings had to be submitted before publication and who either gave or refused permission to print. That this Censorship was shared by Church and State in some instances only complicated the situation.

Second: With the failure to pass the Licensing Bill in 1695 the press became in all parts of the English dominion freed from this censorship; but a system of judicial control took its place, for all publications were now subject to the law of libel, and an attack on the dominant party was held by the courts to be a libel, and a censure of the Governor to be a personal reflection on the King. In Franklin's case in England in 1731,² it was laid down by Lord Raymond that the court alone was to judge of the criminality of a libel, to the jury was given only the right to decide as to the fact of publication.

In England that doctrine continued in force until the passage of Mr. Fox's Libel Bill in 1792. But fifty-eight years earlier the Zenger case (in 1734) had established in principle the freedom of the press in the colonies, by settling the right of juries to find a general verdict in libel cases. We have said "in principle" for this right, which the colonists soon grew to consider as a part of their common law, was yet in practice more or less nullified in the different colonies according as the Governor was able to impose his will on the courts or was opposed by an intelligent public opinion.

In other words, liberty of the press, did not and could not exist in the colonial period, but the people accepted the principle and when they obtained the opportunity incorporated it in Bills of Rights and State Constitutions.¹ The Continental Congress in issuing, on Oct. 21st, 1774, an "Address to the people of Canada" proceeded to detail and enlarge upon the rights to which English subjects were entitled, and among them placed the freedom of the press.³

² Howell's State Trials XVII, 1243.

³ Wm. Duane, "Canada and the Continental Congress," p. 20.

We see the same point made by State after State.

Maryland, 1776: "That the liberty of the press ought to be inviolably preserved."

Virginia, 1776: "That the freedom of the press is one of the great bulwarks of liberty, and can never be restrained but by despotic governments."

Pennsylvania, 1776: "That the people have a right to freedom of speech, and of writing, and of publishing their sentiments; therefore the freedom of the press ought not to be restrained."

Georgia, 1777: "Freedom of the press and trial by jury to remain inviolable forever."

Vermont, 1777: "That the public have the right to freedom of speech and of writing and publishing their sentiments; therefore the freedom of the press ought not to be restrained."

South Carolina, 1778: "That the liberty of the press be inviolably preserved."

Massachusetts, 1780: "The liberty of the press is essential to the security of freedom in a state; and ought not, therefore, to be restrained in this commonwealth."

New Hampshire, 1784: "The liberty of the press is essential to the security of freedom in a state; and it ought, therefore, to be inviolably preserved."

Pinckney's Plan of 1787: "The Legislature of the United States shall pass no law touching or abridging the liberty of the press."

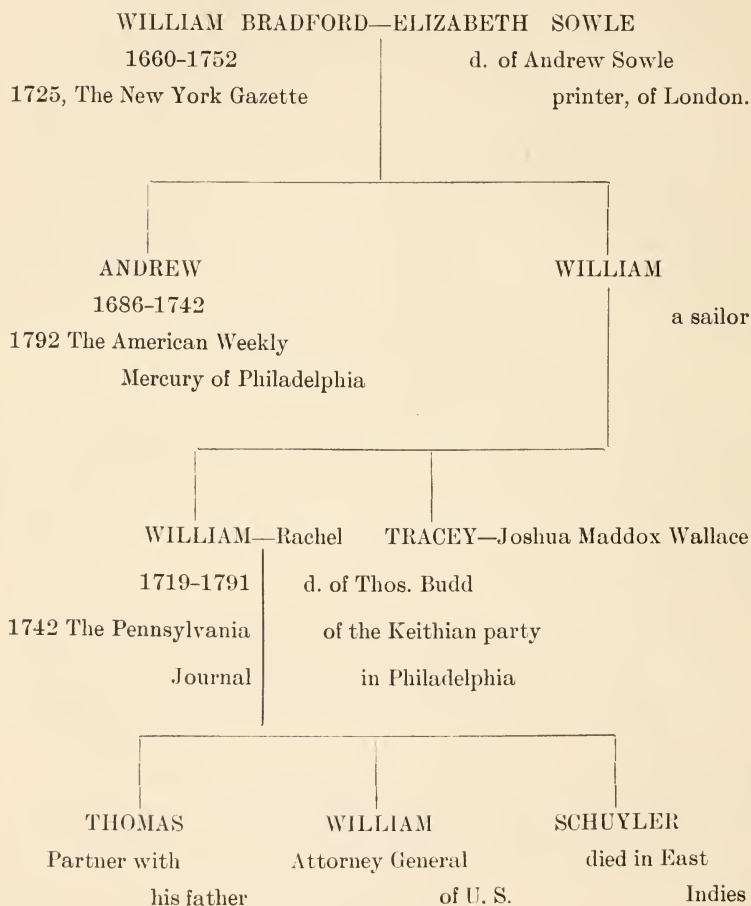
Delaware, 1792: "The press shall be free to every citizen who undertakes to examine the official conduct of men acting in a public capacity, and any citizen may print on any subject, being responsible for the abuse of that liberty. In prosecutions for publications investigating the proceedings of officers, or where the matter published is proper for public information, the truth thereof may be given in evidence; and in all indictments for libels, the jury may determine the facts and the law, as in other cases."

After the Federal Convention came together in 1787 it was proposed to insert in the Constitution, "the liberty of the press shall be inviolably

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GENEALOGY OF THE BRADFORD FAMILY



APPENDIX II.

QUOTATION FROM "THE FORUM."

DAVID PAUL BROWN.

Vol. I., p. 271.

The "Liberty of the Press" in America, is a matter whose earlier history, we think, has not been well apprehended, even among ourselves, in modern times. Knowing, as we do, that our country was, as a general thing, colonized by those who left England in discontent with its laws against a general liberty on the subjects of religion and politics,, we have been led to suppose that THE PRESS was as free in the early state of the colonies as it has been in our own days. This, we take it, is a mistake; it is, certainly, so far as concerns Pennsylvania. There was, in truth, no liberty of the press at all, worth speaking of, in this State, prior to the year 1731; and it seems to have been asserted, and finally established by the printers themselves, against the sharp and unscrupulous action of the crown officers, who exercised in this colony, at least, a power far beyond any ever exercised contemporaneously in England; a power, indeed, such as we find existing only in tyrannies as absolute and irresponsible as those of Naples, St. Petersburg or Vienna. The history of this subject is one of growing interest; it deserves a special study and illustration; and such, sooner or later, it will no doubt receive."

VITA.

The author of this dissertation, Livingston Rowe Schuyler, was born July 22, 1868, in the City of New York. He received his early education in private and public schools in the city, and in 1885 entered the Freshman class of the College of the City of New York. During the last two years of his undergraduate course he gave special attention to American and English History. He was graduated in 1889 with the degree of Bachelor of Arts.

The same year the writer was appointed a Tutor in the Department of Mathematics of the College of the City of New York, which position he held for one year. The year 1890-1891 he spent as Master of the Quarta Form in Trinity School, New York, from which he resigned to enter the General Theological Seminary, New York City. There he continued to give special attention to History. In 1893 he received the degree of Master of Arts from the College of the City of New York for graduate work in History and the presentation of a dissertation. In 1894, on being graduated from the General Theological Seminary, he was recommended by the Faculty to the Trustees for the degree of Bachelor of Sacred Theology, which was conferred in May, 1895.

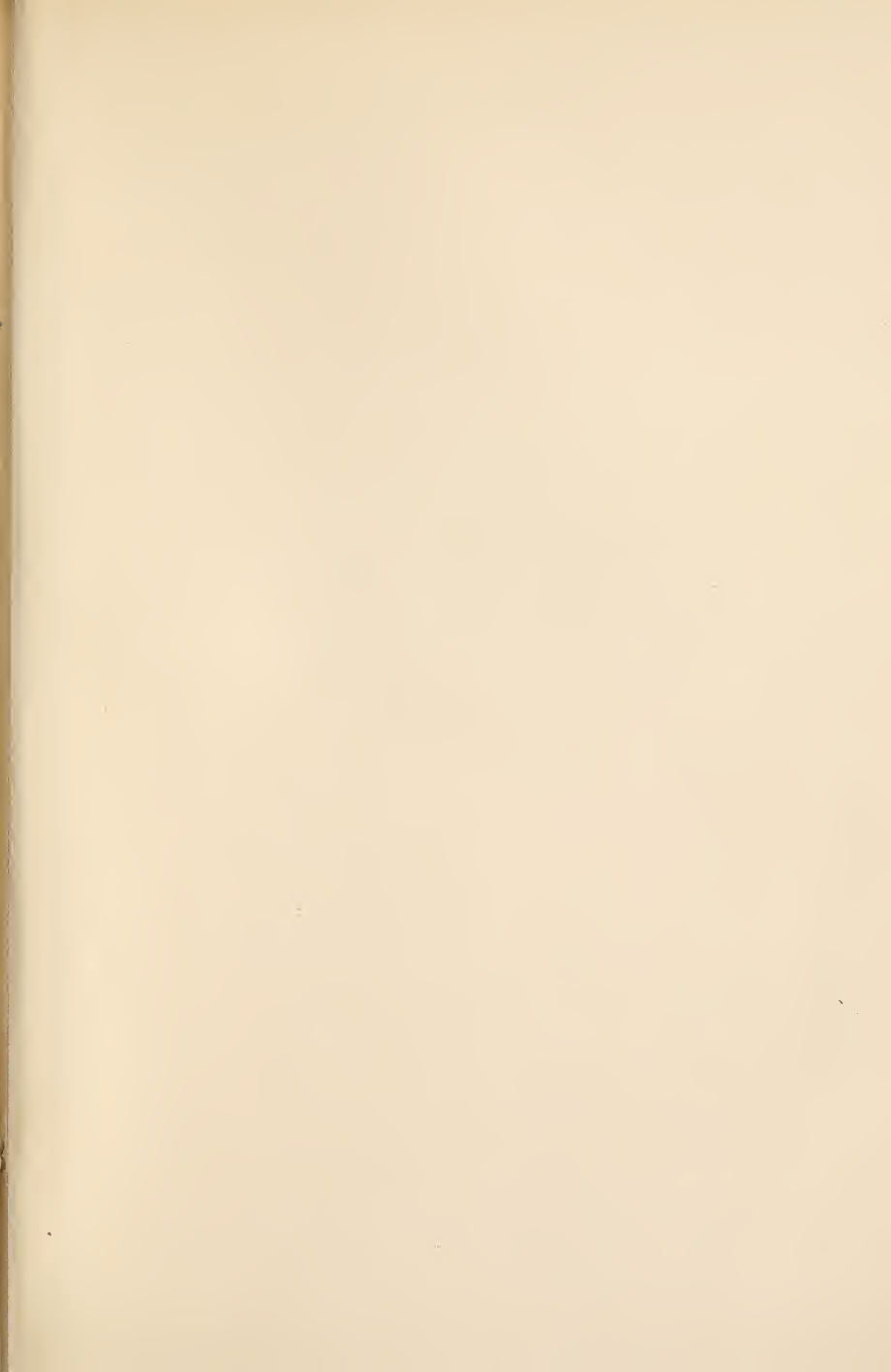
In June, 1894, Mr. Schuyler was appointed to a Travelling Scholarship in Ecclesiastical History by the Church University Board of Regents, his major subject being History, and his minors, Philosophy and Sociology, and the term three years. The first year he spent in study in History at the General Theological Seminary under the Rev. Prof. Ritchie. The year 1895-1896 he spent at the University of Oxford, where he took courses in History under Profs. Bright, Powell and Fletcher, and in Philosophy under Profs. Caird and Case. He also did research work in the Bodleian Library. The next two years he spent in Paris, where for two years he continued his research work and also attended lectures at the University, returning to America at the beginning of the year 1898.

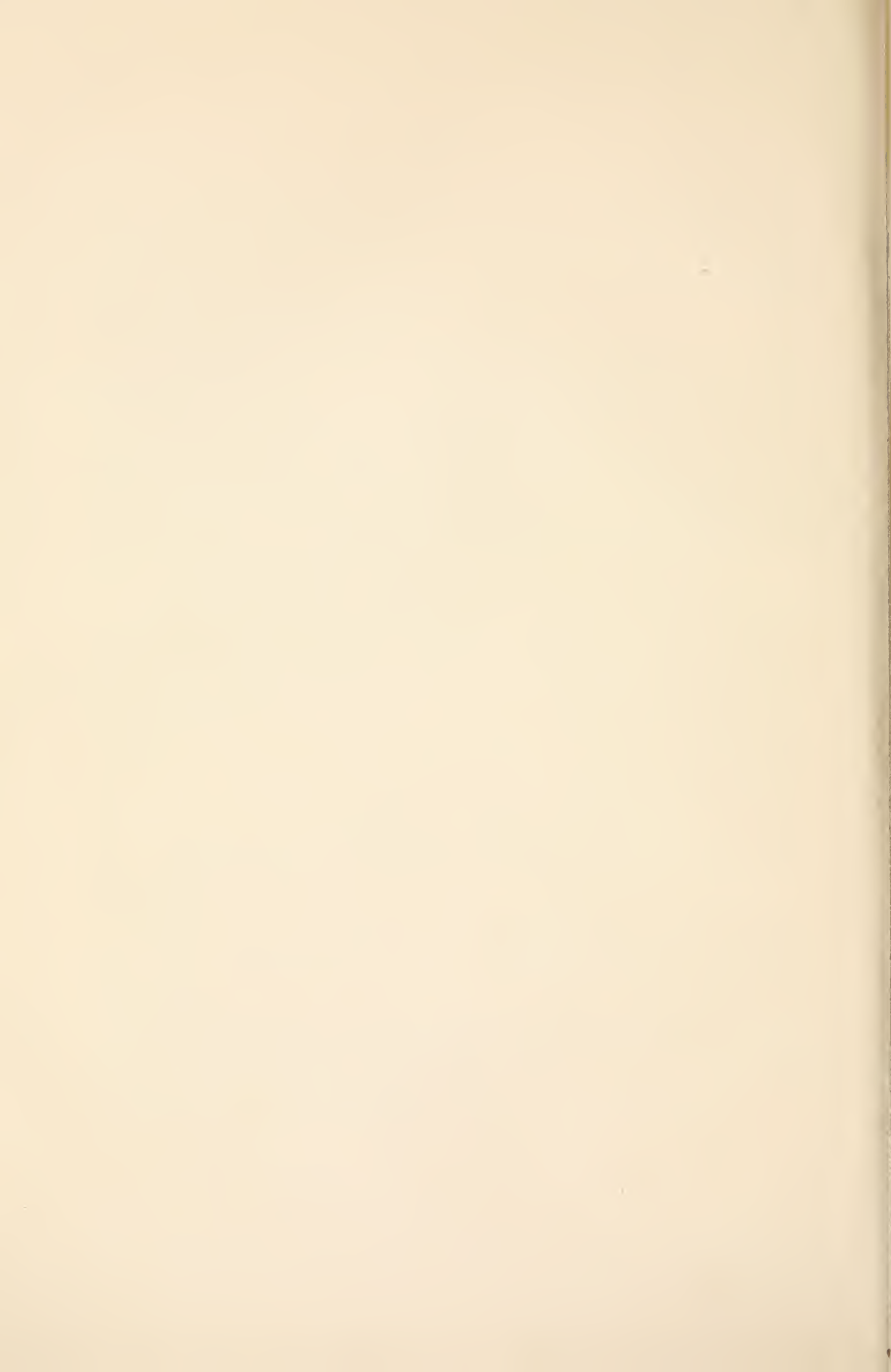
In 1898 he was appointed Tutor in History in the College of the City of New York, and in 1900 was made Instructor, a position he now holds.

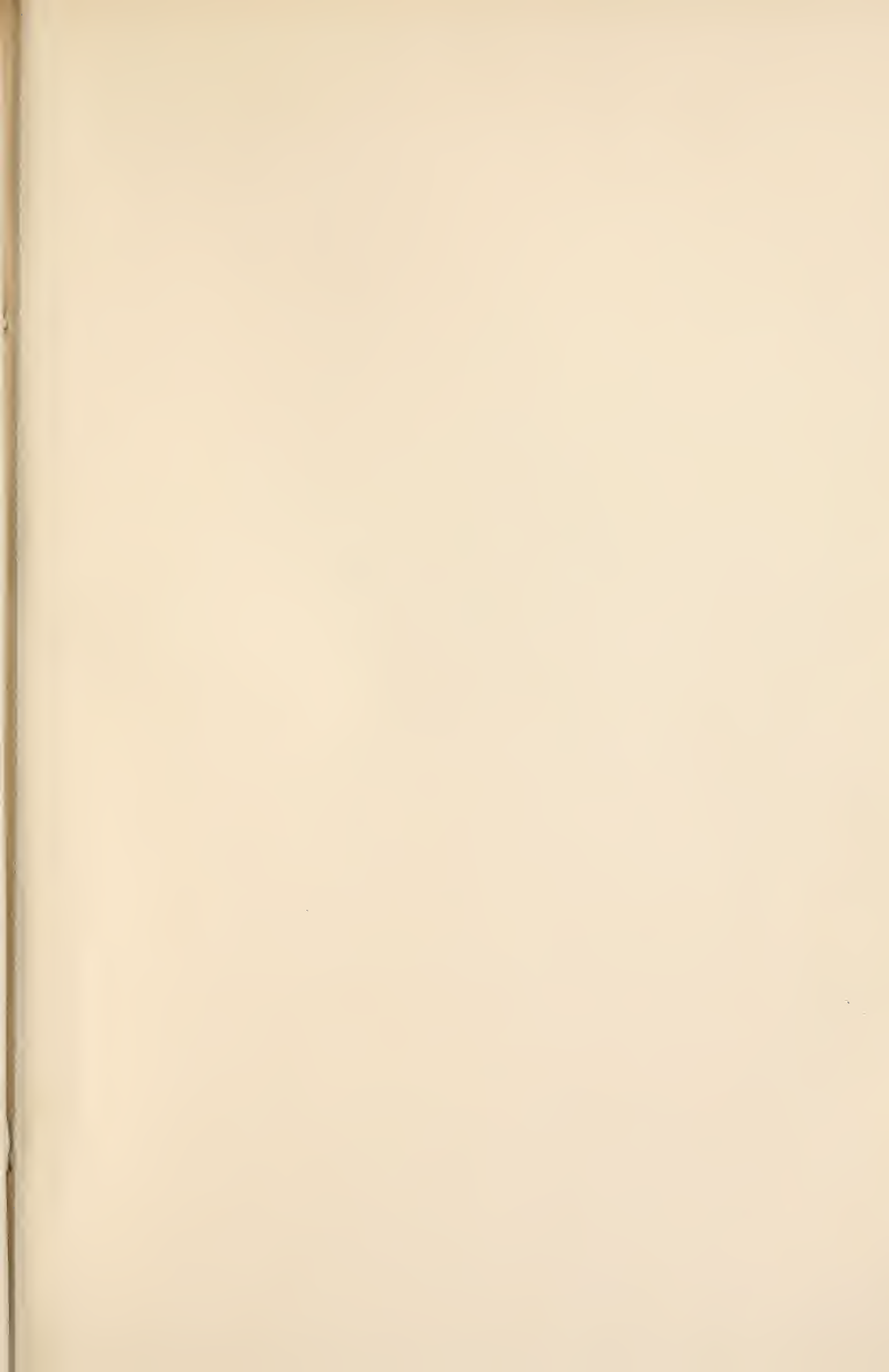
In the School of Philosophy of Columbia University Mr. Schuyler studied under President Butler in Philosophy and under Dean Burgess and Dr. Robinson and Dr. Osgood in American and European History.

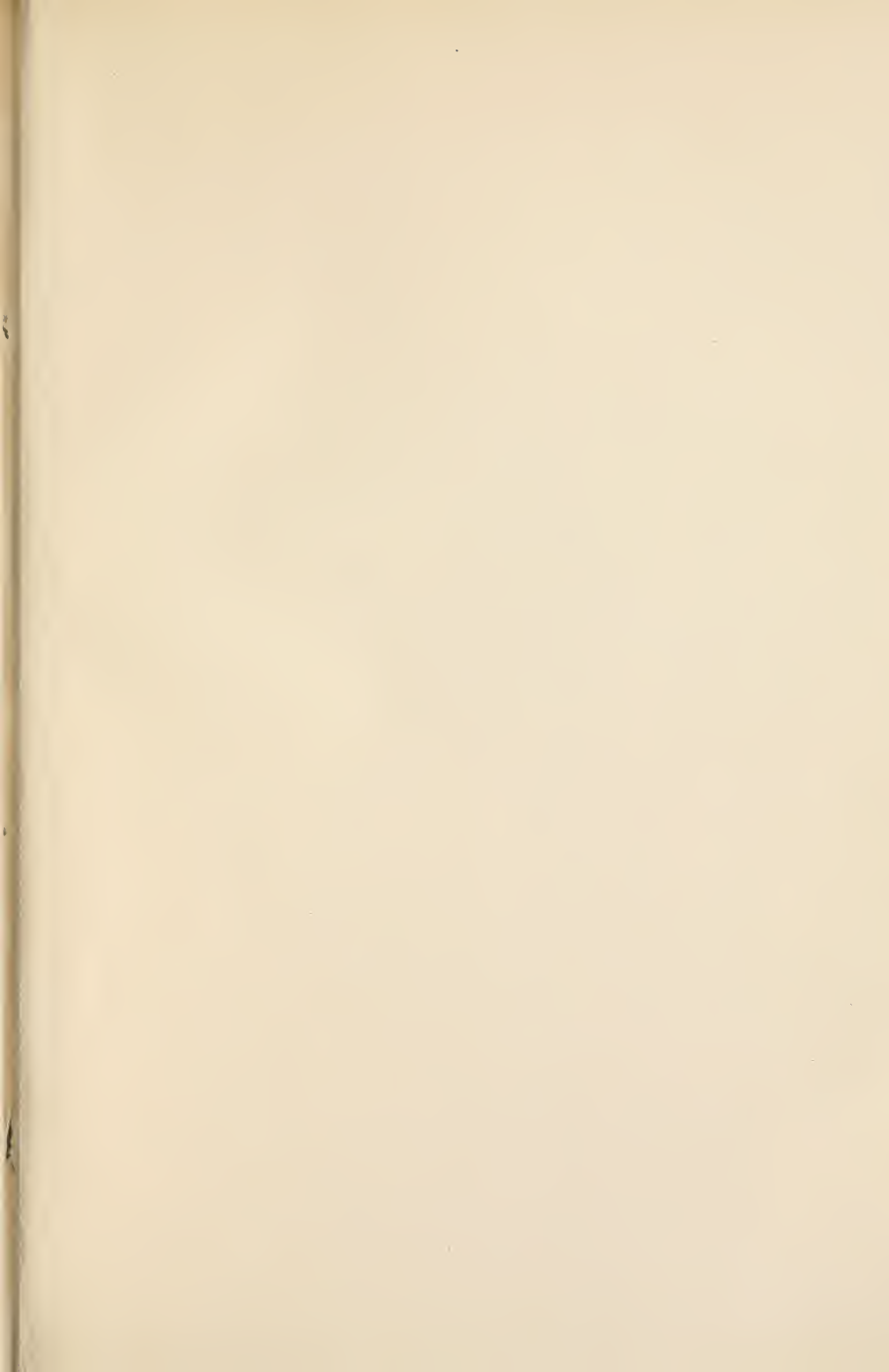
In the Graduate School of the New York University he took courses in Comparative Constitutional Government and American Constitutional History under Prof. Brown, and in Comparative Religion under the Rev. Prof. Ellinwood, and in 1904 received the degree of Doctor of Philosophy.

He has written a number of articles on historical subjects.

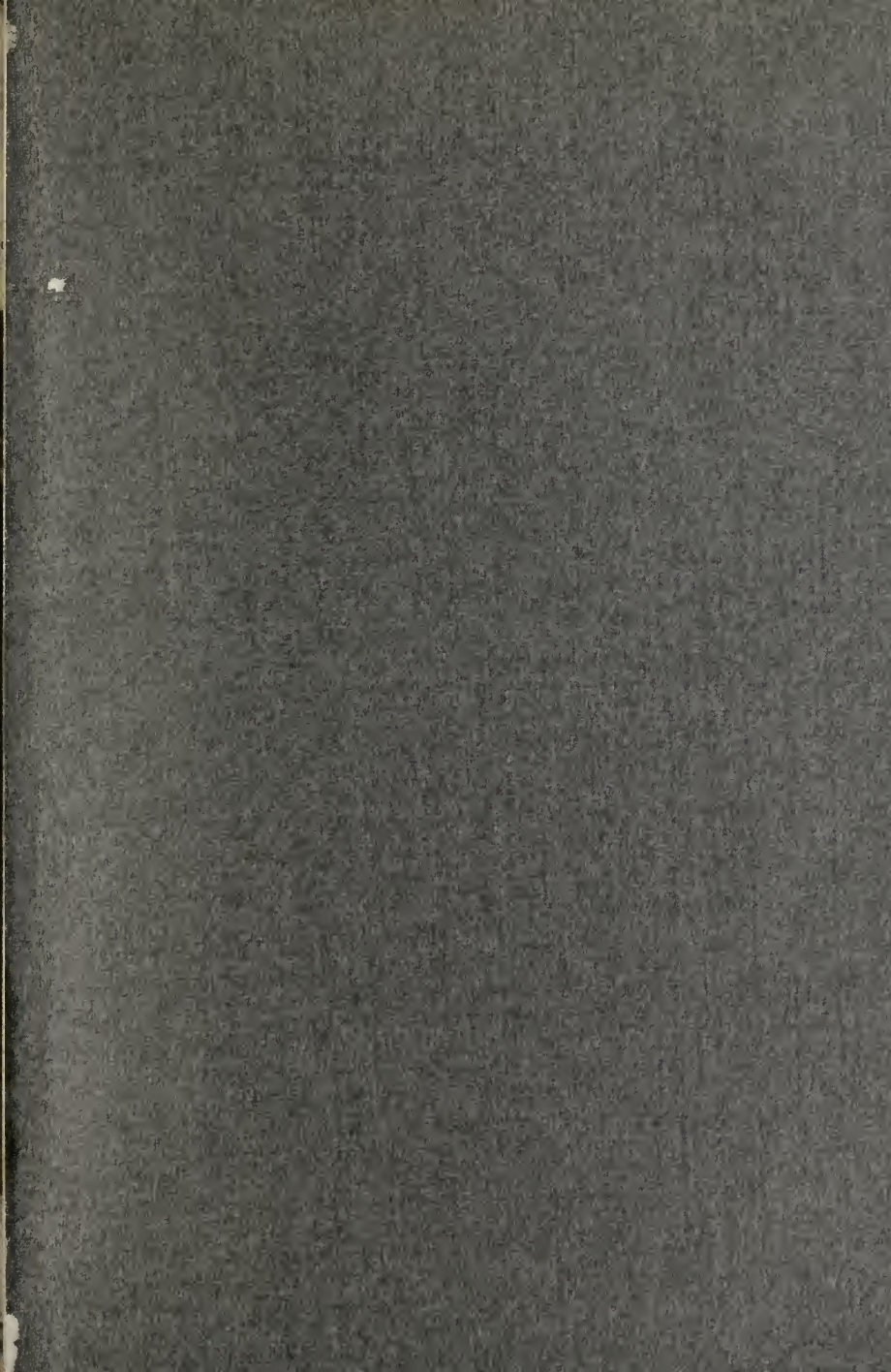












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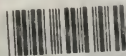
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